

SMALL LANDHOLDERS
(SCOTLAND) ACTS

1886-1911

WITH
AN INTRODUCTION, NOTES, CODE AND
DIGEST OF CASES



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John M. Kennedy.

THE SMALL LANDHOLDERS (SCOTLAND)
ACTS, 1886-1911.



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THE SMALL LANDHOLDERS (SCOTLAND) ACTS, 1886-1911

BEING

THE SMALL LANDHOLDERS (SCOTLAND) ACT, 1911
AND THE CROFTERS ACTS, 1886-1908

AND ALSO

THE CONGESTED DISTRICTS (SCOTLAND) ACT, 1897

WITH

AN INTRODUCTION, NOTES, CODE, AND DIGEST OF CASES

AND AN APPENDIX

CONTAINING THE TEXT OF THE AGRICULTURAL
HOLDINGS (SCOTLAND) ACTS, 1908 AND 1910,
AND THE AGRICULTURAL RATES, ETC.
(SCOTLAND) ACT, 1896

BY

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PREFACE.

THE Small Landholders (Scotland) Bill was first introduced into Parliament in the spring of 1906, and after a somewhat chequered career it became law in its present form in December 1911. The object of the present handbook is to explain the legislation, not to defend or to criticise its policy. The Act incorporates the Crofters Acts, with which the Highlands are familiar, so that the whole body of legislation from 1886 is now made in substance one. It is necessary to treat the Acts together, for the Landholders Act is quite unintelligible to anyone who has not the Crofters Acts before him. Accordingly in this handbook there is a short explanatory Introduction to the legislation, and then there will be found the text of all the Acts, with notes. In the next place there follows what is perhaps the special feature of the handbook, viz. a Code in which, after all the Acts have been broken up into fragments, these fragments are reassorted and put together again in orderly sequence according to the subjects with which they deal. In this way the whole of the legislative provisions in regard to each subject will be found together without any hunting about or any anxiety lest some provision hidden in some corner of one of the Statutes has been overlooked. Next comes a Digest of all the decisions of the Court of Session under the Crofters Acts. Finally there is an Appendix with some explanatory notes on

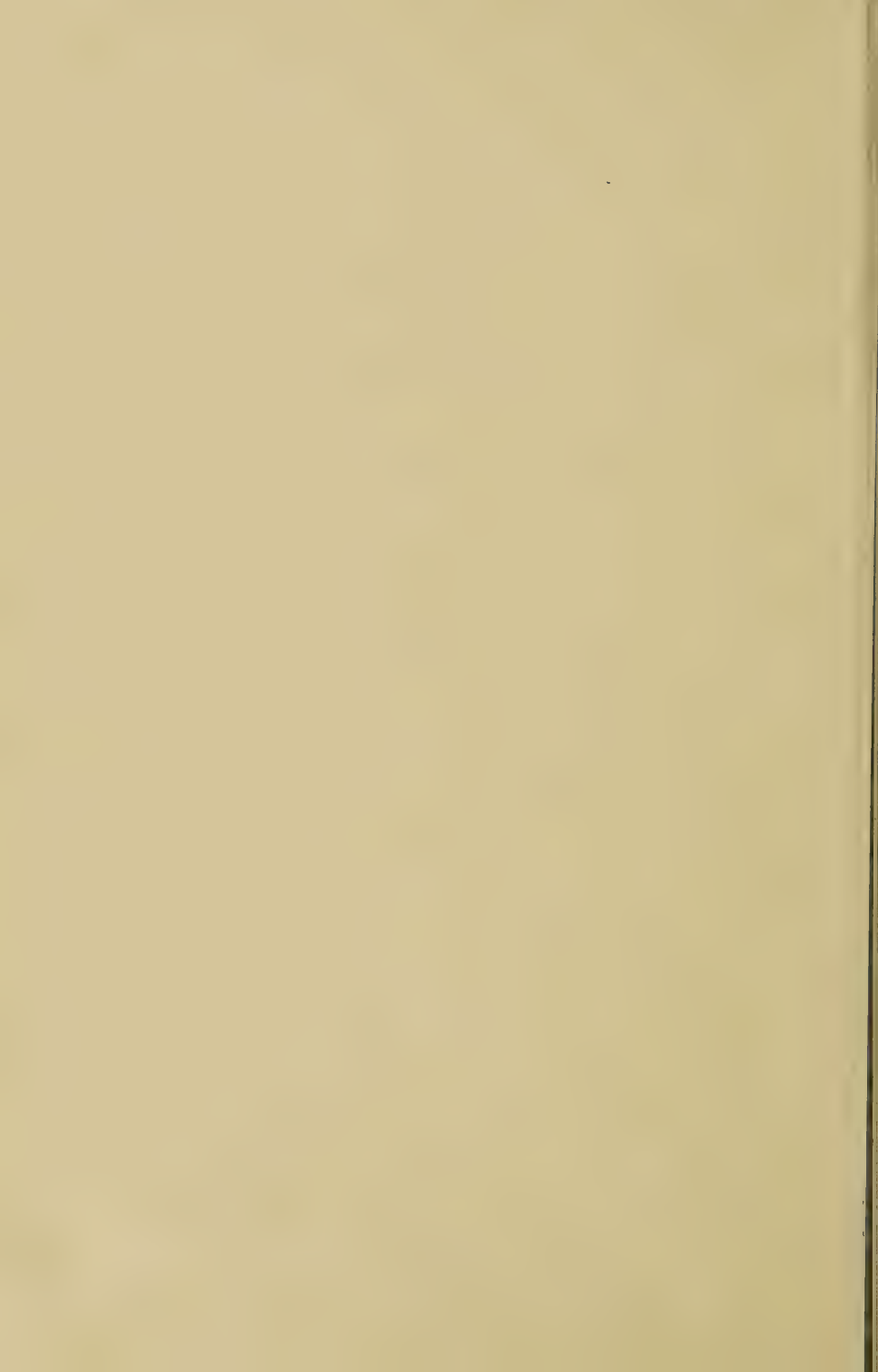
special matters, and the text of the Agricultural Holdings Act of 1908, which is likely to be frequently referred to by those who have to deal in practice with the Landholders Acts, and of the Agricultural Rates Act, 1906.

My thanks are due to Mr. R. B. Pearson, Advocate, who has kindly looked over the proof sheets, and to the Under-Secretary for Scotland for explanations upon certain points submitted to him.

EDINBURGH,
March 1912.

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THE SMALL LANDHOLDERS (SCOTLAND) ACTS, 1886-1911.

INTRODUCTION.

THE Crofters Acts, 1886-1908, introduced a new form of tenure for holdings of a rent not exceeding £30 in the Highland counties. The Small Landholders (Scotland) Act of 1911 extends that tenure to the whole of Scotland, and raises the limit to £50 rent, or 50 acres no matter what the rent. The scheme of the legislation as regards its form and draughtmanship is to amend and adopt the Crofters Acts and to add certain supplementary provisions. Existing crofters are brought into the scheme in a body, but in order to ascertain who they are it is necessary to refer to repealed provisions of the 1886 Act. That Act again incorporates by reference provisions from the Agricultural Holdings (Scotland) Act, 1883, now repealed, whilst the 1911 Act incorporates from the Agricultural Holdings (Scotland) Act, 1908, and the Congested Districts (Scotland) Act, 1897, which it also amends. Accordingly, to apply the Small Landholders (Scotland) Act, 1911, one requires to have before one the Crofters Acts, 1886, 1887, 1891, and 1908 in their original form and also in their amended form, the repealed Agricultural Holdings (Scotland) Act, 1883, the Agricultural Holdings (Scotland) Act, 1908, and the Congested Districts (Scotland) Act, 1897. This makes the construction of this legislation matter of much difficulty. In this introduction all that is attempted is to give a general outline. For full details under each head the Code (p. 117) must be referred to.

The Small Landholders (Scotland) Act, 1911, *inter alia*, (1) provides new systems of tenure for existing small holdings, and (2) makes provision for the creation of new small holdings.

Existing Holdings.*Holdings Included.*(1911, *section 2.*)

The Acts apply, with certain special and limited exceptions mentioned in the next paragraph, to all small holdings in Scotland, *i.e.* to all agricultural holdings of a rent not exceeding £50, or of area not exceeding 50 acres whatever the rent may be. Existing holdings are divided into three classes.

(1) Crofters Holdings under the Act of 1886, *i.e.* crofts being small holdings in the Highland counties which were let from year to year in 1886 at a rent not exceeding £30.

(2) Small holdings other than crofts, whether let upon lease or by the year, where the tenant has provided or paid for the whole or the greater part of the buildings or other permanent improvements.

(3) Similar holdings where the landlord has provided or paid for the whole or the greater part of the buildings or other permanent improvements.

The tenants of class (1) become landholders when the Act of 1911 comes into operation, as do also the tenants of class (2) where the tenancy is an annual one. Where there is a lease tenants of class (2) become landholders when the lease expires. Tenants under class (3) do not become landholders, but they become statutory small tenants (*infra*, p. 14).

Holdings Excepted.(1886, *section 33*; 1911, *section 26.*)

The provisions of the Acts are not to apply to any holding or building let to any employee of the landlord or of his tenant during the continuance of the employment. There is a similar provision in the Agricultural Holdings (Scotland) Act, 1908 (*section 35*). A further exception is made of all holdings or buildings let at a nominal rent or without rent, as a pension to old servants, or on account of old age or poverty. Again, the Act is not to apply to holdings or buildings let to such officials as clergymen or schoolmasters during their tenure of office, or to any innkeeper or tradesman placed in the district by the landlord for the benefit of the neighbourhood.

The question of whether a tenant was a crofter must be determined by the Act of 1886, but as regards all holdings brought into the system for the first time by the 1911 Act there are certain exceptions specified (1911, section 26). These include house gardens, lands within burgh, market gardens, glebes, woodland, amenity, recreation and dealer's or butcher's land, and land dedicated to public undertakings.

Landholder's Tenure.

Its Leading Incidents.

The landholder enjoys fixity of tenure and a judicial rent, but he has no power of assignation except by way of bequest, or, in case of personal infirmity, anticipated bequest, to a relative. Whilst he has fixity of tenure as against the landlord he is bound to the landlord only as a yearly tenant, and he can leave at the close of any year. The fair or judicial rent is subject to revision every seven years. There are, as will presently be explained, certain statutory conditions, breach of which infers irritancy of the tenancy, and the landlord has certain rights of resumption for special reasons. Such are the leading incidents of the landholder's tenure. It is virtually the crofter's tenure, as this has been familiar in the Highlands during the last quarter of a century. It differs from the Irish tenure in respect that the tenant has no right of sale and assignation of his right in the holding. This Scottish tenant right, unlike the Irish, is not marketable, and money cannot be borrowed on its security. The incidents of the tenure will now be described with a little more detail.

Security of Tenure.

(1886, sections 1-3; 1911, section 1.)

The Act gives to the landholder a perpetual tenure, subject to the fulfilment of certain conditions, and defeasible at any time in the option of the landholder on his giving one year's notice to the landlord. So long as the necessary conditions are fulfilled, the landlord cannot remove the landholder from the holding. These conditions are, that the landholder shall not—

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- (1) Fail to pay his rent.
- (2) Attempt to assign his tenancy.
- (3) Persistently cause dilapidation of buildings, or deterioration of soil.
- (4) Subdivide or sublet his holding, or erect additional dwelling-houses thereon, without the landlord's consent
- (5) Persistently violate any reasonable written agreement with reference to the holding.
- (6) Become notour bankrupt, or grant a trust-deed for behoof of creditors.
- (7) Obstruct the landlord in the exercise of any of the proprietary rights specially reserved to him by the statute.
- (8) Open a public-house on his holding without the consent of the landlord.
- (9) Cease to cultivate the holding by himself or his family with or without hired labour.

Notwithstanding fulfilment of the foregoing conditions, the landholder may be removed from the whole or a part of his holding, on such terms as to compensation as the Land Court shall fix, if the landlord satisfy the Court that he desires to resume the whole or part of the holding for some reasonable purpose, having relation to the good of the holding or of the estate.

The landholder cannot be removed for non-payment of rent until one year's rent is due. In that case he is liable to be removed in the manner provided by section 27 of the Agricultural Holdings (Scotland) Act, 1883, viz.: By an action of removing before the Sheriff against the landholder, concluding for his removal from the holding at the term of Whitsunday or Martinmas next ensuing after the action is brought. This irritancy may be purged by payment of the rent, or by finding caution for it and for one year's rent further.

When two years' rent of the holding is due and unpaid, or when the landholder has broken any other of the statutory conditions, he is liable to be removed in the manner provided by section 4 of the Act of Sederunt of 14th December 1756, viz.: By an action for declarator of irritancy and summary

removing before the Sheriff. This irritancy can be purged only by payment of the arrears in full, when the failure in payment of rent is the ground of action. In the other cases, being analogous to a conventional irritancy in a lease, the irritancy cannot, it is thought, be purged at all.

Fair Rent.

(1886, *sections 5 and 6*; 1911, *section 13*.)

The rent annually payable by the landholder, under the permanent tenure conferred upon him by the Acts, is the rent payable by him for the year current when the Act of 1911 commenced, or in the case of a tenant becoming a landholder subsequently the rent for the last year of the lease, or at the date of registration. The rent may, however, be altered in the future in either of two ways: (1) The landlord and the landholder may voluntarily agree to alter the amount of the rent. (2) Either the landlord or the landholder may apply to the Land Court to fix the rent to be paid by the landholder for the holding. The rent cannot be thus altered oftener than once in seven years.

In fixing the amount of the rent, the Land Court are to take into account all the circumstances of the case, holding, and district, and particularly any permanent or unexhausted improvements on the holding, and suitable thereto, which have been executed or paid for by the landholder or his predecessors of the same family. The Land Court will not raise the rent upon the landholder in respect of recent improvements for which he has received no consideration in the way of easier rent or otherwise. In the case of improvements of older date, this circumstance may no doubt be qualified by a regard to the long enjoyment by the landholder of the increased value of the holding, where he has not been deprived of that benefit by any increase of rent since the execution of the improvement.

Towards the solution of the question, What is a fair rent for a landholder? the Act gives no further assistance other than an indirect indication that its determination is not to be governed by a consideration of the sporting value of the land (1886, *section 11*). In accordance with those commercial

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principles which generally obtain in connection with contracts, whether relating to land or to other matters, the fair value of an article is the highest price which it will bring on free exposure in an open market. But it is clear that it was not the intention of the Legislature in 1886 that the fixed rent of a crofting holding should be the highest rent which a solvent tenant would pay for it; for if this were so, there would have been no need for special legislation for the Highland counties. On the other hand, the fair rent of a holding under the 1886 Act did not mean such a rent as would enable the landholder to live and thrive upon the profits of his croft alone, for there are many crofts insufficient of themselves to support a family, even if no rent at all be paid. The objects of the Statute of 1886, in so far as it affected rent, were (1) to relieve the landholders on certain estates and in certain localities from the hardship entailed through advantage having been taken of overpopulation and the consequent struggle for existence, by eliminating these factors in the fixing of rents, and (2) to provide a means of fixing rents adaptive to a system of security of tenure. The objects of the 1911 Act are similar, but the accent is upon the second object, for there is little suggestion of rack-renting in lowland Scotland. It would appear that the reasonable principle is to fix the rent upon the basis of the agricultural value of the land to a prudent agriculturist.

The rent fixed by the Land Court is to be the rent payable by the landholder (1886, section 6, (2) and (3)) as from the first term of Whitsunday or Martinmas after the date when the rent is fixed; but in case the rent fixed by the Land Court is less than the rent the landholder has hitherto paid, the reduction is to draw back to the date of the notice of application to the Land Court to fix the rent.

When an application to fix a rent has been presented to the Land Court, they may pronounce an order (1886, section 6 (4)) which will have the effect of sisting proceedings depending in any Court for the removal of the landholder for non-payment of rent until the application is finally determined, and that upon such terms as to payment of rent or otherwise as they shall think fit. The Land Court are also empowered (1897, section 2) to prohibit the sale of the landholder's effects

under proceedings for recovery of rent, until the application to fix a rent has been disposed of.

Arrears.

(1886, *section 6 (5).*)

The provision above noticed with reference to the sisting of an action of removal for non-payment of rent is explained by the succeeding one, which gives to the Land Court absolute powers of dealing with the arrears upon any holding for which they are called to fix a rent. After considering the whole circumstances of the case, the Land Court may either wipe out all the arrears, or reduce them, or determine that they shall be paid in full; and they may direct whether they are to be paid in one payment or by instalments, and the date or dates at which they shall be paid. The object of this provision was to give a fresh start to crofters who had been long held down by old-standing arrears, and to relieve those who satisfied the Commission that the existence of arrears was due to the imposition of rack-rents which they had been unable to pay.

Succession and Bequest.

(1886, *section 16* ; 1911, *section 20.*)

It is implied in the interpretation of the word "landholder" (1911, 2 (2)), that, in default of bequest, the right to the permanent tenancy of the holding at a fair rent, created by the statute, is to descend to the landholder's heir-at-law. In the event of the heirs-at-law being heirs-portioners, the eldest is to succeed without division (1886, *section 19*). By the Agricultural Holdings (Scotland) Act, 1883, power was given to the tenant to bequeath his lease. A similar power is conferred upon the landholder with reference to the right in his holding. The privilege conferred upon the landholder is more limited, however, than that given to the agricultural tenant, for the landholder can bequeath his tenancy only to a member of his own family. The other provisions with reference to this matter are very similar to those contained in the Agricultural Holdings (Scotland) Act, 1908, except that the Land Court comes in place

of the Sheriff. As security against having an objectionable landholder thrust upon him, an opportunity is to be afforded to the landlord to state before the Land Court any objection he may entertain against receiving the legatee as a landholder; and in the event of the Land Court, whose decision in the matter is final, being satisfied that the objection is a reasonable one, the bequest is to be null. The decision whether a ground of objection is reasonable is one in which the Land Court must exercise a fair discretion. The Land Court will not, it is thought, sustain a bequest to any one to whom a prudent administrator of the estate would not willingly let the holding, as, for example, a person without capital or ignorant of agriculture. No doubt the Land Court is entitled to take more sentimental considerations into account. A bequest will not readily be sustained when the legatee has by any unreasonable conduct made himself justly obnoxious to the landlord, or where he is a person of bad character or dissolute life. Should the legatee decline to accept, or the legacy be set aside by the Land Court, the right to the holding is to descend to the landholder's heir. Where the right to the holding descends by succession or bequest to a relative more remote than a brother or a grandson of the deceased, the landlord may represent to the Land Court that the holding ought to be used for the purpose of enlarging the holdings of neighbouring landholders; and in case the Land Court shall so determine, the succession or bequest is to lapse, the heir or legatee being entitled, however, to compensation for unexhausted improvements on the holding. Power is given to the Land Court to enforce the allocation of land so taken from the heir or legatee among the neighbouring landholders, should the landlord fail to carry this into effect himself.

Assignment of Holding.

(1911, section 21.)

A landholder cannot under ordinary circumstances assign his holding without his landlord's consent, but a landholder who is unable to work his holding through illness, old age, or infirmity may, with leave of the Land Court, assign his holding to any member of his family to whom he might bequeath it.

Legal Category of Landholder's Tenure.

The right conferred upon the landholder by the provisions above explained is declared to be equivalent to a lease (1886, section 19). In reality, however, the right is one altogether *sui generis*, containing elements and conditions incompatible with the contract of lease or of feu, or any other contract known to our law before 1886. The landholder and his heirs are to have a permanent right to the agricultural use of the holding, defeasible at any time at the landholder's pleasure, and subject to certain statutory irritancies, but without power of alienation *inter vivos*, or *mortis causâ*, save to members of the landholder's own family, or of division or subletting, and the rent is to be fixed, in default of agreement, every seven years by a statutory public tribunal.

Compensation for Permanent Improvements.

(1886, sections 8-10.)

On his renunciation of tenancy or removal from his holding, the landholder is to be entitled to compensation for any permanent improvements suitable to the holding, and executed or paid for by himself or his predecessors of the same family whilst under no written obligation to the landlord to make them. "Permanent improvements" are enumerated in the schedule to the 1886 Act. They include most of the improvements enumerated in parts 1 and 2 of the First Schedule to the Agricultural Holdings (Scotland) Act, 1908. Under the latter Act, in order to entitle the tenant to compensation for improvements enumerated in part 1 of the schedule, the written consent of the landlord to the execution of the improvement is necessary, whilst the improvement specified in part 2 requires certain notices to found a claim. The necessity alike for the consents and the notices is superseded by the more general provisions of the Landholders Acts.

A similar privilege in regard to compensation for permanent improvements is provided to cottars who pay rent, but the cottar who pays no rent is to be entitled to compensation only when he is removed by the landlord, not when he himself removes voluntarily. It would clearly be unjust to put

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it in the power of the cottar to say, "I have taken possession of a bit of your land for which I have paid no rent. I have built a house upon it, but now I choose to go away, and you must pay to me the value of the house whether you want the building or not."

Improvements are to be valued at such sum as represents their value to an incoming tenant, under deduction of the value of any assistance or consideration allowed by the landlord to the landholder for making the improvement, and of any deteriorations permitted or committed by the tenant during the last four years.

The Acts make no express provision for the ascertainment of the amount of compensation to be awarded under these provisions except in certain special cases (1911, sections 8 and 14). It is provided (section 31 of 1886) that where compensation for improvements is sought under the Agricultural Holdings (Scotland) Act, the improvements are to be valued by the Land Court, unless the parties otherwise agree. The last item in the enumeration of permanent improvements in the schedule is, "All other improvements which in the judgment of the Land Court shall add to the value of the holding to an incoming tenant." Proceeding upon these *indiciæ*, the Court held that the jurisdiction was with the Crofters Commission (now Land Court), and that the jurisdiction of the ordinary Courts of law was excluded.¹

Regulation of Common Grazings.

(1891 and 1908, *the whole Acts* ; 1191, *section 24.*)

The Acts contain long and elaborate clauses for the regulation of common grazings. These tedious provisions, however, are matters of local interest, and need not here be explained in detail. This system of management is not likely to be much extended as it leads to constant friction.

New Holdings.

(1911, *sections 7 and 8.*)

There are three ways in which a new holding within the meaning of the Act of 1911 may be created.

¹ *M'Dougall v. M'Alister*, 1890, 17 R. 555.

(1) The landlord and tenant may arrange for the creation and equipment of the holding without the intervention or assistance of the Board of Agriculture, and landlord and tenant may then agree to the tenant being registered as a landholder. This will probably rarely happen, because under section 35 the landlord is free to make his own bargain with the tenant, and may remain outside the Act and under the ordinary law.

(2) The Commissioner for Small Holdings (one of the Board of Agriculture, *infra*, p. 18) may arrange with the landlord for the adjustment of a scheme for the creation and equipment of one or more small holdings with the financial assistance of the Board of Agriculture. In this case, as in the preceding one, the rent may be fixed for a longer time than the statutory seven years.

(3) Failing agreement the Board of Agriculture may through the intervention of the Land Court obtain compulsory powers for the creation of one or more small holdings.

In the creation of a new holding by compulsion there are three stages.

(a) The Commissioner for Small Holdings fails to arrange with the landlord for the creation of holdings.

(b) He then applies to the Board of Agriculture, who, after hearing parties and considering the matter, may, if satisfied that new holdings ought to be created, resolve to proceed with a scheme for that purpose.

(c) If the landlord still refuses to assent to the scheme the Board may apply to the Land Court to make a compulsory order for the creation of new holdings in terms of the scheme, which order, with or without modification of the scheme, the Land Court is empowered after hearing parties to make.

In making the order the Land Court fixes the rent for the new holdings. It is also empowered to award compensation to the landlord or tenant of the land for any injury caused to him or to his estate or farm by the creation of the new holdings. If the amount claimed under this head is more than £300 the claimant is entitled to have his claim adjudicated

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upon by an arbiter, appointed by a judge of the Court of Session, instead of the Land Court. The Board need not proceed with the scheme if they think the compensation awarded either by the Land Court or the arbiter too onerous.

Certain lands are excluded from the operation of these provisions. These are specified in section 7 (16) and 26 (3) and (4). The most important are farms not exceeding 150 acres, or in the case of pastoral farms £80 of rent, lands in burghs, glebes, home farms, amenity lands, recreation lands, lands under leases current at Whitsunday 1911, or in the case of the Highland counties Whitsunday 1906. A preference is to be given to lands falling out of lease (section 7 (5)).

The Board may assist the equipment but not the stocking of new holdings by grants of money either as loans or in the case of equipment other than buildings as gifts to the landholder. There are special provisions to enable the Board to enforce recovery of money advanced (section 8) which need not be here detailed. The Board may also compensate a tenant whose land is taken by agreement in whole or in part (section 7 (8)). If a holding taken compulsorily becomes vacant the landlord has a second opportunity of claiming damages (section 17).

Enlargement of Holdings.

(1886, *sections 11-15*; 1911, *section 16*.)

A single landholder or a group of landholders resident on neighbouring holdings, in case the landlord or landlords refuse to let them available land which they are willing to take on reasonable terms for enlarging their holdings, may apply to the Board of Agriculture setting forth these facts. Thereafter the procedure is to be *mutatis mutandis* similar to the procedure in the creation of new holdings as already described both as regards the acquisition of the land, compensation, and assistance to equipment.

Before giving additional land to the landholders the Land Court must be satisfied—

- (1) That there is available land which the landlord refuses to give on reasonable terms; and in considering what are reasonable terms, the Land Court is not to

have regard to the fact that the landlord might get more than the agricultural value by letting the land for sporting purposes.

- (2) That the tenants are willing and able to pay a fair rent, and properly to stock and cultivate the addition to the holding.

On being satisfied on those points, the Land Court may make an order which will have the effect of adding additional land to the holdings of the applicants, or of one or more of them, at a fair rent, and upon such terms and conditions as the Land Court shall consider just.

Land is not to be deemed available for the purpose of enlarging landholders' holdings under the Act otherwise than by agreement which—

- (a) Would not be liable to be taken for the creation of new holdings as already explained.
- (b) If arable land, unless contiguous or near to the holding to which it is to be added.
- (c) If its addition would make the holding exceed the statutory limits of acreage or rent.
- (d) If it is let as a deer forest and its appropriation would seriously impair the use of the remainder as a deer forest and act injuriously upon the prosperity of the inhabitants of the district.

Instead of giving to each landholder applicant a bit of additional land for himself, the Land Court may assign to a body of landholders a piece of land with rights of common pasturage among themselves. The Land Court may also, in dealing with applications for the enlargement of holdings, admit the applicants to a share of rights of common pasturage enjoyed by other landholders.

Where land is assigned by the Land Court for the enlargement of landholders' holdings, the Land Court may make such orders and directions as to the erection and maintenance of the fencing of this land, and the cost of the same, as they shall think just, regard being had to the advantage accruing to the several parties interested from the fencing of the land.

In the event of the land taken for the enlargement of holdings being let on lease at the time the Land Court are to

determine what reduction of rent the tenant is to receive in respect of the appropriation of the land.

Statutory Small Tenants.

(1911, *section 32.*)

Under the scheme of the bill in its original form every small tenant became a landholder. This has now been departed from, and a new code has been made for ordinary small tenants who were in possession when the Act came into force. Such tenants become landholders only when the buildings and other improvements have been in greater part provided or paid for by the tenant or his predecessors of the same family. Outside the Highlands there are very few such holdings in Scotland. They used to be common in Aberdeenshire and the north-east, but even in that district the landlord has now generally bought up the tenant's interest in the improvements or his "inventory" as it was called.

The statutory small tenant is the tenant in possession of an agricultural holding of not more than £50 of rent, if exceeding 50 acres in area, at the date of the commencement of the Act (1st April 1912) who has not executed or paid for the greater part of the buildings or other permanent improvements by himself or his predecessor of the same family. The tenant who is in this position is, like the landholder, to have fixity of tenure, and, in case the landlord and he cannot agree between themselves, a judicially fixed rent. These are the two cardinal features of the landholder's tenure, so the differences between the two tenures are not fundamental. They are not, however, without importance.

(1) The landholder possesses under statutory conditions. The statutory small tenant at the date of the commencement of the Act will generally be under a lease for a term, and, whether he is so or not, the holding is let to him on certain conditions (pactional or common law, or both) besides the obligation to pay rent. These conditions are now stereotyped by the Act. He may remain indefinitely in the holding, and the rent may be altered, but neither the tenant nor the Land Court can alter any other condition except with the landlord's concurrence.

(2) The landholder has simply a yearly term with right

of renewal at his option. He can go away any year. The statutory small tenant may be bound for any term that may be agreed upon which the Land Court may think reasonable.

(3) The landholder's rent in the ordinary case is subject to revision every seven years; the statutory small tenant's rent only at the expiry of the agreed-upon term.

(4) The Land Court fixes a "fair rent" for the landholder, "an equitable rent" for the statutory small tenant. In the latter case the Court must figure a willing lessor and a willing lessee; the rent must be such as might reasonably be looked for in the open market. In the case of a "fair rent" for a landholder, the Court may disregard the local market when from special circumstances they deem it not a proper guide.

(5) The landlord of the landholder is under no obligation to provide or maintain buildings or other improvements. The landlord of the statutory small tenant must on the renewal of a tenancy provide the necessary buildings, and must maintain the buildings and permanent improvements necessary for the reasonable cultivation of the holding in so far as the tenant is not bound at common law or by agreement in writing to do so. If the landlord fails to fulfil these obligations to the satisfaction of the Land Court the tenant may be declared to be a landholder.

(6) The landlord cannot get quit of the landholder except by resumption for a reasonable purpose or by removal for breach of a statutory condition. The landlord has the like powers of resumption in the case of a statutory small tenant, and also power to resume under any agreement, but he may also decline to renew on the expiry of a term if he can satisfy the Land Court that he has a reasonable ground of objection to the tenant. The conditions other than payment of rent for breach of which the statutory small tenant may be removed, are such as are contained in his lease or exist at common law, and either by the lease or at common law are sanctioned by an irritancy.

(7) The statutory small tenant cannot, like the landholder, through the intervention of the Board and the Land Court obtain compulsorily an enlargement of his holding.

(8) The statutory small tenant, like the landholder, may bequeath to a member of his family, but cannot like the landholder anticipate this by assignation when infirm.

(9) The landholder may claim compensation for improvements under these Acts. The statutory small tenant's claim is measured by the Agricultural Holdings Acts.

VACANT HOLDINGS.

(1911, *sections 17 and 3, 2 (3).*)

Where a landholder's holding becomes vacant the landlord cannot, without the consent of the Land Court, let it otherwise than to another landholder for the enlargement of his holding or to a new landholder. The time during which this prohibition is to endure and other conditions are to be determined by the Land Court. Provision is made for compensation of the landlord in case of loss.

In the case of a holding which has been held by a statutory small tenant becoming vacant the provision is different. It cannot be merged in any other agricultural holding without the sanction of the Board, but there is no obligation to let it under any particular form of tenure.

Agreements Outside the Act.

(1886, *section 30* ; 1911, *section 35.*)

The Acts do not contain any provisions which strike at agreements to exclude the operation of the Acts, except the provisions in regard to vacant holdings. But as the Acts apply to all tenants in possession of their holdings in 1912, and give them fixity of tenure and a judicial rent, the landlord has no compulsitor to make them enter into any such agreements. The Acts can be excluded, therefore, only when both parties are satisfied that it is their mutual interest to agree to exclude them. There is a provision (1886, section 30) that the landlord and tenant may of consent agree that a sole arbiter shall act instead of the Land Court.

The landlord and tenant may create a holding by voluntary agreement (1911, section 35) which is to be outside the Acts under conditions of tenure governed by the contract as interpreted by the ordinary law.

The Land Court.

(1911, *sections* 3, 25, 28.)

The administration of the Act is entrusted to two bodies—the Land Court and the Board of Agriculture. Originally the proposal was to have one body of Commissioners for both judicial and administrative purposes, but the system embodied in the Act was ultimately adopted with the view in so far as possible to separate the judicial from the administrative machinery. The Land Court represents the judicial side, and the functions of the Crofters Commission are transferred to it. It is composed of five members—a chairman who must be an advocate of ten years' standing and is to have the rank of a judge of the Court of Session, and four other members, presumably agriculturists, one of whom must be familiar with Gaelic. It possesses the ordinary powers of a Court for summoning witnesses and examining them upon oath, for requiring production of documents, etc., and for awarding expenses; but orders of the Land Court upon which execution and diligence can proceed must be enforced by a decree conform pronounced by the Sheriff. An appeal by way of stated case upon a question of law can be taken from the Land Court to the Court of Session.

The duties of the Court are multifarious, and it would be tedious here to enumerate them in detail. The more important duties may be thus summarised:—

(1) To determine all questions in regard to the compulsory creation of new holdings or enlargement of holdings.

(2) To determine who are landholders and who are statutory small tenants.

(3) To fix the rents of landholders and statutory small tenants when appealed to, and to determine questions about common grazings as regards the former and buildings and duration of lease as regards the latter.

(4) To determine questions arising in connection with a change of the tenant's occupancy under such heads as renunciation, resumption, bequest, assignation, vacant holding, compensation for improvements, etc.

The Board of Agriculture.(1911, *sections 4, 28.*)

The Board of Agriculture is to consist of three persons whose qualifications are not specified. One is to be Chairman and another is to be called the Commissioner for Small Holdings. The Board, like other administrative boards in Scotland, is to be connected with the Scottish Office at Dover House, and must comply with the instructions received from the Secretary for Scotland.

The Board is to discharge important duties in connection with small holdings under this Act, but its functions are much wider. Except as regards diseases of animals it becomes the Department of Agriculture for Scotland, and is to take over the duties hitherto discharged in Scotland by the Board of Agriculture and Fisheries and the Congested Districts Board. The principal duties of the Board are:—

(1) The duties hitherto discharged by the Board of Agriculture and Fisheries under different statutes other than as regards diseases of animals and ordnance survey.

(2) The duties hitherto discharged by the Congested Districts Board under the Act of 1897.

(3) Collection of statistics, inquiries, experiments, and research in relation to agriculture, forestry, and other rural industries.

(4) Instruction in agriculture, forestry, and other rural industries.

(5) Promotion and development of agricultural organisation and co-operation.

(6) Creation and equipment of small holdings and enlargement of holdings.

(7) Loans to landholders for buildings.

Finance of the Act.(1911, *sections 5, 6.*)

The Board have £200,000 per annum placed at their disposal; of this sum £35,000 has hitherto been paid to the

Congested Districts Board, the balance of £165,000 is a new grant by Parliament. This money is to be applied for facilitating the constitution of new holdings, improvement or rebuilding of buildings of landholders and cottars, and for the exercise of the other powers and duties of the Board specified in the immediately preceding paragraph. The ordinary expenses of the Land Court and of the Board do not come out of this grant, but have to be provided over and above by the Treasury. The Congested Districts Board, which since 1897 has administered an annual grant of £35,000 for improvement and development of the congested districts in the north and west, now disappears. The work may be continued by the new Board, but there is no sum specially appropriated to it.

TEXT OF THE SMALL LANDHOLDERS (SCOTLAND) ACTS, 1886-1911, AND THE CONGESTED DISTRICTS (SCOTLAND) ACT, 1897, WITH NOTES.

I.

SMALL LANDHOLDERS (SCOTLAND) ACT,
1911.

[1 & 2 GEO. V. CHAP. 49.]

ARRANGEMENT OF SECTIONS.

Section.

1. Crofters Acts applied throughout Scotland.
2. Who to be landholders.
3. Constitution of Scottish Land Court.
4. Constitution of Board of Agriculture for Scotland.
5. Moneys placed at disposal of Board of Agriculture.
6. Application of moneys.
7. Powers to facilitate the constitution of new holdings.
8. Provisions regulating loans to landholders.
9. Loans for buildings.
10. Additional statutory conditions.
11. Obligations of new holders under Public Health Act.
12. Use by landlord of water rising on a holding.
13. Present rent.
14. Adjustment of rights by Land Court.
15. Registration.
16. Amendment of law as to enlargement of holdings.
17. Amendment of law as to vacant holdings.

Section.

18. Amendment of law as to renunciation of holdings.
19. Declaration of law as to resumption of holdings.
20. Amendment of law as to bequest of holdings.
21. Assignment of holding.
22. Loss of rights by heir in certain cases.
23. Arrears of rent to be set off against compensation for improvements.
24. Amendment of law as to regulation of common grazings, &c.
25. Jurisdiction of Land Court.
26. Supplementary provisions and restrictions.
27. Special provision for the Island of Lewis.
28. Transfer of powers and duties.
29. Transfer of property.
30. Transfer of officers.
31. Definitions.
32. Provisions as to statutory small tenants.
33. Register of small holdings.
34. Act to apply to Crown land.
35. Small holdings may be constituted outside Act.
36. Short title and construction.
37. Extent of Act.
38. Commencement of Act.
39. Repeal.

SCHEDULES.

SMALL LANDHOLDERS (SCOTLAND) ACT, 1911.

(1 & 2 GEO. V. c. 49.)

An Act to encourage the formation of Small Agricultural Holdings in Scotland, and to amend the Law relating to the Tenure of such Holdings (including Crofters' Holdings); to establish a Board of Agriculture for Scotland; and for other purposes connected therewith.

[16th December 1911.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *Crofters Acts Applied throughout Scotland.*—From and after the commencement of this Act, and subject to the provisions thereof, the Crofters Acts¹ shall be read and construed as if the expression “landholder”² were substituted for the expression “crofter” occurring therein, and shall have effect throughout Scotland.³

¹ Of 1886, 1887, 1891, and 1908. The Act of 1888 is repealed by this Act.

² This word marks at the outset the difference between this Act and the Crofters Acts. The latter Acts gave legal validity to an old customary tenure, and therefore an old word sufficed. The present Act, so far as the lowland area is concerned, creates an altogether new form of tenure, and hence a new word is required.

³ The Crofters Acts applied only to crofting parishes within the counties of Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney and Shetland. Eight parishes in Argyll, two in Inverness, and two in Ross and Cromarty were not brought within their scope. See *infra*, p. 187.

2. *Who to be Landholders.*—(1) In the Crofters' Acts and this Act (herein-after referred to collectively as the Landholders Acts) the word "holding"¹ means and includes²—

- (i) As from the commencement of this Act,³ every holding which at the commencement of this Act is held by a crofter to whom in respect of such holding the Act of 1886 applies (herein-after referred to as an existing crofter);⁴
- (ii) As from the commencement of this Act, and subject as herein-after provided,⁵ every holding which at the commencement of this Act is held by a tenant from year to year who resides on or within two miles from the holding, and by himself or his family cultivates the holding with or without hired labour⁶ (herein-after referred to as an existing yearly tenant);⁷
- (iii) As from the termination of the lease,⁸ and subject as herein-after provided,⁹ every holding which at the commencement of this Act is held under a lease for a term longer than one year¹⁰ by a tenant who resides on or within two miles from the holding, and by himself or his family cultivates the holding with or without hired labour (such tenant, or his heir or successor, as the case may be, holding under the lease at the termination thereof being herein-after referred to as a qualified leaseholder):

Provided that such tenant from year to year or leaseholder¹¹—

(a) shall (unless disqualified under section twenty-six of this Act) be held an existing yearly tenant or a qualified leaseholder within the meaning of this section in every case where it is agreed between the landlord and tenant or leaseholder, or in the event of dispute proved to the satisfaction of the Land Court, that such tenant or leaseholder or his predecessor in the same family¹² has provided or paid for the whole or the greater part¹³ of the buildings or other permanent improvements¹⁴ on the holding without receiving from the land-

lord or any predecessor in title payment or fair consideration therefor; and

(b) in every other case shall not be held an existing yearly tenant or a qualified leaseholder within the meaning of this section, but shall (unless disqualified under section twenty-six of this Act) in respect of the holding be subject to the provisions of this Act regarding statutory small tenants;¹⁵

(iv) As from the date of registration, every holding which is constituted by the registration of an applicant in respect thereof on his application under the provisions of this Act respecting the constitution of new holdings (herein-after referred to as a new holder).¹⁶

(2) In the Landholders Acts the word "landholder" means and includes, as from the respective dates above mentioned, every existing crofter, every existing yearly tenant, every qualified leaseholder, and every new holder, and the successors of every such person in the holding being his heirs or legatees.¹⁷

¹ The definition of "holding" in section 31 of the Crofters Act, 1886, is repealed in the schedule to this Act, but it may still be necessary to refer to it should any question arise as to whether a tenant was a crofter at the commencement of this Act. This repeal throws one back upon the general provision in said section 31 that expressions are to have the same meaning as in the Agricultural Holdings (Scotland) Act, 1883. Under section 42 of that Act holding is defined as "any piece of land let to a tenant." Under section 26 (3) (d) and (f) hereof, however, the application of the present Act is limited by reference to the Agricultural Holdings (Scotland) Act, 1908, to "any piece of land held by a tenant which is either wholly agricultural or wholly pastoral or in part agricultural, and as to the residue pastoral and which is not let to the tenant during his continuance in any office appointment or employment held under the landlord." See also section 26 (4) and (10). It is not a valid objection that the lands are runrig (*Macaulay v. Orde*, 1894, Report of C. C. Parl. Papers, 1895, c. 7704, p. 138). Ancillary rights which were pertinents of the holding as let to the tenant are pertinents under the landholder's tenure (*MacDonald v. MacDougall*, 1896, 23 R. 941; cf. *Purr v. MacLean*, 1889, 16 R. 810). As to subtenants, see pp. 53, 55 (note).

² The generality of this provision strikes every student of the Act on first perusal. The Act seems to apply to all holdings in Scotland. It is only when one reaches section 26 that, under what with quaint irony is called a "supplementary provision," one finds that the operation of the

Act is limited to holdings which are either under £50 in rent or 50 acres in extent.

³ 1st April 1912.

⁴ See the definition of "crofter," in section 34 of the Crofters Act, 1886 (p. 96). The repeal of that definition does not affect this provision.

⁵ See provisos (a) and (b), *infra*, in this section.

⁶ The residence and cultivation must subsist at the commencement of the Act, and the cultivation must be at least in part that of the tenant or his family. Doubtful cases may arise, particularly where the tenant is a woman with no member of her family working on the holding. It is thought that under this section the word "family" falls to be liberally construed. The obligation as to cultivation is kept up for the future by section 10 (1), but there seems to be no continuing obligation of personal residence. The case of *Livingstone v. Beattie*, 1891, 18 R. 735, may be referred to.

⁷ The Act makes no special provision for the case of a tenant who is under notice to quit, or has intimated intention to quit, at Whitsunday 1912. There was a somewhat similar hiatus in the Agricultural Holdings Act of 1883, and the Court held that the Act must be construed literally according to its terms (*Macdonald v. Finlayson*, 1884, 12 R. 228).

⁸ Until the termination of the present lease no change takes place. "Termination of the lease" is defined in section 31.

⁹ See note 5, *supra*.

¹⁰ That is as from the commencement of the lease, not from the commencement of the Act.

¹¹ The framework and phraseology of this section are very confusing. The matter may be expressed thus quite simply: "Every tenant of a small holding who has made his own permanent improvements becomes a landholder; as from the passing of the Act, if he be a yearly tenant; as from the termination of the lease if he be a leaseholder."

¹² See note 6, *supra*.

¹³ In value.

¹⁴ "Permanent improvements" are defined by section 34 of the Crofters Act, 1886, which is to be construed along with this Act.

¹⁵ See section 32. This will be found to cover virtually all the small holdings in Scotland outside the Highlands and its fringes.

¹⁶ See sections 7 and 15.

¹⁷ It also includes tenants who, having begun as statutory small tenants, have been declared landholders under section 32 (11) in respect of default on the landlord's part as regards permanent improvements, and statutory successors under section 8 (2), and assignees under section 21.

3. Constitution of Scottish Land Court.—(1) It shall be lawful for His Majesty, on the recommendation of the Secretary for Scotland, as from the commencement of this Act, and from time to time as vacancies occur, to appoint not more than five

persons, to be designated the Scottish Land Court (in this Act referred to as the Land Court) and to appoint one of such persons to be Chairman of the Court.

(2) The Chairman shall be a person who at the date of his appointment shall be an advocate of the Scottish Bar of not less than ten years' standing, and shall forthwith on his appointment have the same rank and tenure of office as if he had been appointed a judge of the Court of Session.

(3) One of the said persons shall be a person who can speak the Gaelic language.

(4) It shall be lawful for the Secretary for Scotland to remove any member of the Land Court (other than the Chairman¹) for inability or misbehaviour. Every order of removal shall state the reasons for which it is made, and no such order shall come into operation until it has lain before both Houses of Parliament for not less than thirty days while Parliament is sitting, nor if either House passes a resolution objecting to it.

(5) If and when the Chairman is temporarily unable to attend, or his office is vacant, the Secretary for Scotland may appoint to act temporarily in his place any person having the qualification required for holding the office of Chairman and the person so appointed shall, during such inability or vacancy, have the same powers and perform the same duties as if he were the Chairman.

(6) The Secretary for Scotland shall from time to time appoint a fit person to act as principal clerk to the Land Court.

(7) The Land Court may appoint or employ such assessors, surveyors, law agents, valuers, clerks, messengers, and other persons required for the due performance of their duties, as the Treasury, on the recommendation of the Secretary for Scotland, may sanction.²

(8) Any Crofters Commissioner or officer of the Crofters Commission in office at the commencement of this Act, who may not be appointed a member or an officer of the Land Court, shall receive such compensation as the Treasury may determine.

(9) There shall be paid to the Chairman of the Land Court a salary not exceeding two thousand pounds a year, and to

each of the other members a salary not exceeding twelve hundred pounds a year, and such salaries shall be charged on and paid out of the Consolidated Fund of the United Kingdom, or the growing produce thereof.³ The Chairman shall have the same right to a retiring annuity proportionate to his salary, subject to the like conditions and incidents as if he had been appointed a judge of the Court of Session, and every such annuity shall be charged and paid as aforesaid.⁴

(10) There shall be paid to each of the other persons appointed or employed under this section such salary or remuneration as the Treasury may sanction; and all such salaries and remuneration and the expenses of the Land Court incurred in the execution of their duties, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

(11) The Land Court shall submit such estimates and keep such accounts of their receipts and expenditure, and their accounts shall be audited in accordance with such regulations, as the Treasury may direct.

(12) It shall be lawful for the Land Court from time to time to make rules for conducting the business of the Court.

¹ The Chairman, having the tenure of a Judge of the Court of Session, cannot be removed except on addresses from the Houses of Parliament.

² This provision points a distinction between the Land Court and an ordinary Law Court. The State employs the officers and officials whom the latter requires.

³ The effect of this provision is that the salaries of the members of the Land Court not being included in the annual estimates their conduct cannot be impugned on the estimates in the House of Commons.

⁴ The other members of the Land Court have no claim to pensions; but there is no age limit.

4. Constitution of Board of Agriculture for Scotland.—(1) It shall be lawful for His Majesty on the recommendation of the Secretary for Scotland as from the commencement of this Act, and from time to time as vacancies occur, to appoint not more than three persons to be designated the Board of Agriculture for Scotland (in this Act referred to as the Board) and to appoint one of such persons to be Chairman of the Board. Any act or thing required or authorised to be done

by the Board may be done by any one or more of the members thereof as the Secretary for Scotland may from time to time direct. Provided that all deeds, writs, and documents to be signed or executed by or on behalf of the Board may be signed or executed by any one of the members thereof and the secretary to the Board. The Board may sue or be sued under the designation aforesaid, and service on them of all legal processes and notices shall be effected by service on their secretary.

(2) The Board shall be charged with the general duty of promoting the interests of agriculture, forestry, and other rural industries in Scotland, and shall also exercise and perform any powers and duties which are or may be conferred on or transferred to them under the provisions of this Act. In the discharge of their duties they shall comply with such instructions or regulations as may from time to time be issued by the Secretary for Scotland, and they shall submit an annual report of their proceedings to him, which report shall be laid before both Houses of Parliament.

(3) The Board may undertake the collection and preparation of statistics relating to agriculture, forestry, and other rural industries, and may make or aid in making such inquiries, experiments, and research, and collect or aid in collecting such information relating thereto as they think advisable.

(4) It shall be the duty of the Board to promote, aid, and develop instruction in agriculture, forestry, and other rural industries.

(5) The Board shall take such steps as they think proper for the promotion and development of agricultural organisation and co-operation.

(6) Without prejudice to the provisions of the immediately preceding subsections, such one of the members of the Board as the Secretary for Scotland shall from time to time appoint shall be designated the Commissioner for Small Holdings and shall be specially charged with the duties herein-after committed to him.

(7) The Secretary for Scotland shall from time time appoint a fit person to act as secretary to the Board.

(8) The members of the Board shall hold office during His

Majesty's pleasure. The Board may, subject to the approval of the Secretary for Scotland, appoint or employ such officers, clerks, and other persons as the Treasury may sanction.

(9) The members of the Board and other persons appointed or employed under this section shall respectively receive such salary or remuneration as the Treasury may sanction, and all such salaries or remuneration and the expenses of the Board incurred in the execution of their duties, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

(10) The Board shall submit such estimates and keep such accounts of their receipts and expenditure, and their accounts shall be audited in accordance with such regulations as the Treasury may direct.

(11) The powers and duties of the Board of Agriculture and Fisheries, exerciseable in or in relation to Scotland under the enactments specified in the First Schedule to this Act or under any local Act, shall be transferred to the Board, or in the case of the powers and duties of any officer, to such member or officer of the Board as the Board nominate for the purpose.

(12) Subject as herein-after provided, it shall be lawful for His Majesty in Council by Order, made after consultation with the Board of Agriculture and Fisheries and the Secretary for Scotland and with the consent of the Treasury, to transfer to the Board any powers and duties of the Board of Agriculture and Fisheries exerciseable in or in relation to Scotland which are not transferred by this Act and to make any adjustment consequential on any transfer by or under this section, and to provide for any matter necessary or proper for giving full effect to any such transfer.

(13) Before any such order is made, the draft thereof shall be laid before each House of Parliament for not less than two months while Parliament is sitting, and if either House, before the expiration of such period of two months, presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft order.

(14) Nothing in this section shall transfer or authorise the

30 SMALL LANDHOLDERS (SCOTLAND) ACT, 1911

transfer of any powers or duties under the Survey Act, 1870 (33 & 34 Vict. c. 13), or any powers or duties exercisable under the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), or any enactment amending or extending the same.

5. *Moneys Placed at Disposal of Board of Agriculture.*—The following moneys shall be placed at the disposal of the Board for the purposes herein-after specified:—

(a) The annual sum of fifteen thousand pounds available under subsection two of section four of the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896 (59 & 60 Vict. c. 37), during the continuance of that Act;¹ and

(b) Any sums not exceeding one hundred and eighty-five thousand pounds annually voted by Parliament for the said purposes.²

The said moneys shall in the financial year commencing on the first day of April nineteen hundred and twelve, and in any subsequent financial year, be paid into one fund hereby constituted under the name of the Agriculture (Scotland) Fund.³

Any sum standing to the credit of the Congested Districts (Scotland) Fund at the commencement of this Act,⁴ and any sums required by the provisions of any Act to be carried to the Congested Districts (Scotland) Fund, shall at and after the commencement of this Act be carried to the Agriculture (Scotland) Fund.

¹ This sum is part of the grant given to Scotland when the rating of agricultural land was reduced in 1896. It was to be applied for the benefit of congested districts under an Act subsequently to be passed. This Act was passed in 1897 (see p. 108).

² To the extent of £165,000 this is new money, for in addition to the £15,000 before referred to £20,000 was annually voted to the Congested Districts Board, whose resources were therefore £35,000 per annum.

³ The expenses of administering the Act do not come out of this fund, but are provided over and above by the Treasury.

⁴ The Congested Districts Board have not been able to spend all the money placed at their disposal; not from want of will or absence of need, but because the failure of many well-meant experiments has made them cautious.

6. *Application of Moneys*.—The Agriculture (Scotland) Fund shall be applied for the following purposes, that is to say, for the purpose of facilitating the constitution of new landholders' holdings, the enlargement of landholders' holdings, and the improvement and rebuilding of dwelling-houses or other buildings of landholders and cottars in terms of the Landholders Act or the Congested Districts (Scotland) Act, 1897 (60 & 61 Vict. c. 53), and for the purpose of exercising the other powers and duties conferred on or transferred to the Board under the provisions of this Act, in accordance with schemes to be approved by the Secretary for Scotland.

7. (1) *Powers to Facilitate the Constitution of New Holdings*.—It shall be lawful for the landlord of any land and any other person¹ to agree that in respect of such land such person may apply to the Land Court to be registered as a new holder under this Act, and such person may thereupon apply accordingly, and subject to the provisions of this Act may be so registered.²

(2) It shall be the duty of the Commissioner for Small Holdings to report from time to time to the Board after due inquiry what demand³ for small holdings exists in any district, and after consultation (where practicable) with the landlord or landlords what land (if any) is available to meet that demand, without causing undue displacement of farm servants presently⁴ employed on or about such land, under what conditions such land is cultivated, and what employment it affords.

(3) Where the Commissioner for Small Holdings is satisfied that there is a demand for small holdings and that suitable land exists it shall be his duty to negotiate with the landlords of such land with a view to the adjustment of a scheme for the registration by agreement of any one or more new holders in respect of such land.⁵

(4) Failing agreement, such land may, otherwise than by agreement, be made available for the registration of new holders in the manner and subject to the conditions herein-after prescribed.⁶

(5) In proceeding under this section, the Board shall take

steps to ascertain what land is falling or is about to fall out of lease where the present tenant is not an offerer, and shall preferably select such land (if otherwise suitable) for the constitution of new holdings otherwise than by agreement.⁷

(6) Where a new holder is registered under this section by agreement, the rent agreed between the landlord and the new holder shall not, if the same shall have been agreed upon for a specified period, be altered by the Land Court during such period, and shall not in any case be altered by the Land Court for a period of seven years from the term at which it first becomes payable.⁸

(7) Where, with a view to, or as incidental to, the registration of a new holder or holders in respect of any land, whether by agreement or otherwise, the Board are of opinion, upon consideration of a report by the Commissioner for Small Holdings, that assistance should be provided for the purpose of dividing, fencing, or otherwise preparing or adapting the land, making occupation roads, or executing other works, such as works for the provision of drainage⁹ or water supply, or erecting or adapting a dwelling-house or dwelling-houses or other buildings, or for any similar purpose, the Board may provide such assistance by way of loan or (except as regards dwelling-houses or other buildings)¹⁰ by way of gift, and subject to such conditions as they may prescribe. Conditions so prescribed and the provisions for their enforcement or for the case of their violation shall be as effectual as if they were contained in this Act.

(8) Where the Board are of opinion that damage or injury will be done to any tenant in respect that the land forms part or the whole of his tenancy, they shall pay compensation as may be agreed between the Board and such tenant.¹¹

(9) Where the Commissioner for Small Holdings reports that the landlord refuses to negotiate, or where, after submitting to the landlord a scheme for the constitution of one or more new holdings on the land, he reports that no agreement can be reached, it shall be lawful for the Board, after due notice and after hearing any party who desires to be heard,¹² to intimate to the landlord and to other parties concerned that it is in the public interest that one or more new holdings should

be constituted on the land in accordance with the said scheme, and that they propose to apply to the Land Court to make an order or orders for the constitution of one or more new holdings on the land in accordance with such scheme, to be occupied by new holders, at a fair rent and upon such terms and conditions not inconsistent with the Landholders Acts as the Land Court consider just; and thereafter to apply accordingly.

(10) Before making such an order, the Land Court shall give all parties having a right or interest in the land an opportunity of being heard.

(11) The Land Court shall thereafter determine, with due regard to the provisions of the Landholders Acts, and by order or orders declare—

- (a) In respect of what land, if any, specified in the scheme,¹³ one or more holdings for new holders may respectively be constituted, and up to what date the power to constitute them otherwise than by agreement may be exercised;
- (b) What is the fair rent for each new holding;¹⁴
- (c) What land, if any, specified in the scheme is to be excluded therefrom; and
- (d) Whatever else may be necessary for the purpose of making the scheme effective and of adjusting the rights of all parties interested in or affected by the proceedings:

Provided that, where the Land Court are of opinion that damage or injury will be done to the letting value of the land to be occupied by a new holder or new holders, or of any farm of which such land forms part, or to any tenant in respect that the land forms part or the whole of his tenancy, or to any landlord either in respect of an obligation to take over sheep stock at a valuation or in respect of any depreciation in the value of the estate of which the land forms part in consequence of and directly attributable to the constitution of the new holding or holdings as proposed, they shall require the Board, in the event of the scheme being proceeded with, to pay compensation to such amount as the Land Court determine after giving parties an opportunity of being heard and, if they so desire, of leading evidence in the matter:¹⁵

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Provided always that where within twenty-one days after the receipt from the Land Court of an order under this subsection¹⁶ a landlord or a tenant, as the case may be, intimates to the Land Court and to the Board that he claims compensation to an amount exceeding three hundred pounds and that he desires to have the question whether damage or injury entitling him to compensation as aforesaid will be done, together with the amount of such compensation (if any), to be settled by arbitration instead of by the Land Court, the same shall be settled accordingly; and at any time within fourteen days¹⁷ after the said intimation failing agreement with the Board as to the appointment of an arbiter, it shall be lawful for him to apply to the Lord Ordinary on the Bills for such appointment, and the Lord Ordinary shall forthwith on receipt of such application nominate a single arbiter to decide the questions aforesaid, whose award shall be final and binding on the Board, in the event of the scheme being proceeded with; and, if no final award be given within three months from the date when the arbiter is nominated, the questions aforesaid shall be decided by the Land Court as hereinbefore provided:

Provided that the Arbitration (Scotland) Act, 1894 (57 & 58 Vict. c. 13), shall not apply, and the Second Schedule to the Agricultural Holdings (Scotland) Act, 1908¹⁸ (8 Edw. VII. c. 64), shall apply to any such arbitration, with the exception of paragraphs one, five, ten, eleven, and sixteen thereof, and with the substitution of the Lord Ordinary for the Sheriff and the Auditor of the Court of Session for the Auditor of the Sheriff Court; and provided further that in the event of the scheme not being proceeded with, the expenses of parties reasonably incurred in connection with the arbitration as the same may be allowed by the Auditor of the Court of Session shall be paid by the Board.¹⁹

In determining the amount of compensation under any provision of this Act no additional allowance shall be made on account of the constitution or enlargement of any holding being compulsory.

(12) In or after making such an order, the Land Court (without prejudice to their other powers) may do, provide, or decide anything incidental to or consequential on such an order

as if it were an order under section twelve of the Act of 1886,²⁰ and may, if they think fit, provide for the incorporation with the order, subject to the necessary adaptations, of any provisions of the Lands Clauses Acts which appear to them requisite for carrying the order into effect.

(13) Upon such an order providing for the constitution of one or more new holdings on any land being issued, the Board may proceed to make it effective by entering on the land, carrying out works, and otherwise as may be required (due compensation to such amount as may be agreed or as, in case of dispute, may be determined by the Land Court being made for surface damage), and may negotiate with one or more duly qualified applicants with a view to their registration as new holders in respect of the land.

(14) A new holder shall not be duly qualified for registration otherwise than by agreement who does not satisfy the Board as to his ability to fulfil the obligations incumbent on him.

(15) The Board shall give reasonable consideration to objections stated by a landlord to any applicant for a new holding, and *ceteris paribus* shall give a preference to applicants preferred by the landlord.

(16) Except by agreement, a new holder shall not be registered—

(a) In respect of any land being or forming part of a farm not exceeding one hundred and fifty acres occupied by a person who has no personal interest²¹ in any other farm, or in the case of a farm so occupied which exceeds one hundred and fifty acres but is wholly or mainly pastoral, not exceeding an annual value as entered in the valuation roll of eighty pounds:²² Provided that nothing herein contained shall operate to prevent the registration otherwise than by agreement of two or more new holders in respect of the whole of such farm, not being a farm wholly or mainly pastoral, where no other land is available in the neighbourhood of any existing village or township;²³ or

(b) In respect of any land being or forming part of a farm occupied subject to a lease which was in force at

Whitsunday nineteen hundred and eleven, or in the case of land within the counties specified in section nineteen of the Act of 1886²⁴ at Whitsunday nineteen hundred and six, so long as the lease remains in force.

(17) All parties being possessed of lands or any right or interest therein who under the Lands Clauses Acts have power on behalf of themselves or of others to convey and dispose of such lands, or of such rights therein for the purposes mentioned in those Acts, shall have the like power to enter into any agreement or give any consent for the purposes of this section.²⁵

(18) Notwithstanding anything contained in the Congested Districts (Scotland) Act, 1897 (60 & 61 Vict. c. 53), the expression "landlord" in this section includes the Board in respect of any land purchased under that Act and transferred to the Board under the provisions of this Act.

(19) Any member of the Land Court, or the Board, or any person authorised in writing by the Land Court or by the Board, may for the purposes of the Landholders Acts enter upon and inspect any lands or buildings at all reasonable hours on any lawful day after due notice has been given to the owner and occupier of such lands or buildings.

¹ The consent both of the landlord and the tenant is required. See section 2 as to the different ways in which a landholder may originate.

² See section 15.

³ There may be a demand for small holdings by persons without any means or otherwise unsuitable, but in this and the following subsection "demand" must be construed to mean a reasonable demand by eligible applicants.

⁴ The word is ambiguous. The meaning probably is "at the time being."

⁵ See subsection 1, *supra*.

⁶ See subsection 9, *infra*.

⁷ It is not clear why this provision is limited by those last words. Where a present tenant desires to renew his lease the hardship to him is just as great where the Board facilitates the taking of the farm for small holdings with the landlord's acquiescence, as where it takes it from the landlord by compulsion.

⁸ Land holdings created in this way will be on a special footing. In other cases there may be a revision every seven years, but under this clause the rent may be made virtually as permanent as a feu-duty.

⁹ This seems to point to drainage for buildings, but may possibly be held to cover field drainage which is not otherwise mentioned, but this was not intended.

¹⁰ In the case of buildings there cannot be a gift, but only a loan.

¹¹ Such damage must, it is thought, be limited by the duration of the tenant's tenure when the land is taken. This is the general rule, and there is no provision here to the contrary. No express power is given to compensate the landlord except when the land is taken compulsorily. But such power may perhaps be inferred from the authority to make a scheme under subsection three, and the very general powers under section six.

¹² The "demand" for small holdings has, in effect, to run the gauntlet of three inquiries: first by the Commissioner for Small Holdings, next by the Board, and finally by the Land Court.

¹³ The Land Court cannot go outside the scheme submitted to them.

¹⁴ If tenants cannot be got to give the rent so fixed the whole scheme will fall through.

¹⁵ The question of compensation cannot well be taken up until an order has been pronounced for the creation of new holdings. The entertainment of the two questions together would not consist with what follows as to the alternative of arbitration.

¹⁶ *I.e.* an order for the creation of new holdings in terms of (a), (b), (c), and (d), *supra*.

¹⁷ This seems a very short period for correspondence as to an arbiter, failure to agree, and application to the Court.

¹⁸ See p. 210.

¹⁹ If the Board consider the compensation awarded either by the Land Court or the arbiters excessive, they are not bound to proceed with the scheme. It is only, however, in the event of arbitration that the landlord has in this event an absolute right to his expenses.

²⁰ That is an order for an enlargement of holdings under the Crofters Act of 1886 (see *infra*, p. 81).

²¹ This is not a very satisfactory phrase. A son goes into a holding, and the father is taken bound along with him as tenant. Does this disqualify the father in the case of another holding? This provision seems to contemplate a farm which is let, and not to be applicable to a farm which is out of lease.

²² In some districts there are pastoral farms of much more than 150 acres in extent, the rent of which is very small.

²³ The prohibition is absolute where there is no village or township in the neighbourhood. This proviso is intended to meet some special cases in the Highlands.

²⁴ Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney and Shetland.

²⁵ There is no provision in the Act as to how damages are to be treated in the case of a landlord who has only a life or otherwise limited interest. The Land Court, however, may incorporate provisions of the Lands Clauses Acts to cover the matter (see subsection 12, *supra*), or deal with it directly under subsection 11 (d).

8. *Provisions Regulating Loans to Landholders.*—(1) The agreement for any assistance given to a landholder by way of loan under the immediately preceding section shall be recorded in the Landholders Holdings Book,¹ and, as recorded, shall have the effect of transferring to the Board all rights of the landholder and his statutory successors to compensation for permanent improvements up to the amount of any outstanding liability owing to the Board; provided that the amount of such compensation when claimed shall in such case in the event of dispute be assessed by the Land Court, and provided further that any amount due to the Board from a landlord under this section may, if the Board on the application of the landlord so determine, be deemed to be a loan to the landlord (secured on the holding and on any buildings thereon) within the meaning of section six of the Congested Districts (Scotland) Act, 1897 (60 & 61 Vict. c. 53), to which the provisions of that section shall apply.²

(2) In the event of breach by a landholder of the conditions of repayment of any loan under the immediately preceding section, the Land Court may, on the application of the Board, and after consideration of any objections stated by the landlord, make an order for the removal of the landholder from the holding as if he had broken a statutory condition, and for the assignation of the holding to some one person (being an applicant therefor) subject to such conditions as they see fit, and such person shall thereupon succeed to the holding of the landholder and shall be deemed to be his statutory successor.

(3) All moneys received for payment of interest or repayment of principal or otherwise in respect of any loan made by the Board under the immediately preceding section shall be paid to the fund out of which the loan was made.

(4) The Land Court shall, on the application of the Board or of the landlord or the landholder, append to their order fixing a fair rent for a holding a record specifying the condition of the cultivation of the holding, and of the buildings and other permanent improvements thereon, and by whom such permanent improvements have been executed or paid for.³

¹ This is the Register kept by the Sheriff-Clerk, hitherto known as the Crofters Holdings Book (see *infra*, p. 92).

² See *infra*, p. 113. This is to allow the landlord time, which is not an unreasonable concession, for it does seem somewhat of a hardship that the landlord may have to pay to a tenant who was put upon his land without his consent, and who departed likewise without his consent, compensation for buildings erected without his consent and contrary to his opinion as to their utility.

³ This is to secure to each party a record to fall back upon in case of future dispute as to credit or blame. There is a similar provision in the Agricultural Holdings Act, 1908 (section 24, see p. 203).

9. *Loans for Buildings.*—The Board may, where they are of opinion that assistance should be provided for the improvement or rebuilding of dwelling-houses or other buildings of landholders¹ or cottars,² provide such assistance by way of loan, subject to the like conditions and incidents as loans made under section seven, and if made to a landholder, subject to the provisions of section eight of this Act.

¹ Sections 7 and 8 dealt with the provision of loans only in the case of the creation of new holdings.

² See *infra*, p. 97.

10. *Additional Statutory Conditions.*—The following conditions are hereby prescribed as statutory conditions additional to or in modification of those prescribed in section one of the Act of 1886¹:—

- (1) The landholder shall, by himself or his family,² with or without hired labour, cultivate his holding, without prejudice to the right (which is hereby conferred upon him) to make such use thereof for subsidiary or auxiliary occupations as in case of dispute the Land Court may find to be reasonable and not inconsistent with the cultivation of the holding;³ provided that the expression "cultivate" in this subsection shall include the use of a holding for horticulture or for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit, vegetables, and the like:
- (2) The expression "passing of this Act" in subsection four of section one of the Act of 1886 shall, in the application of that subsection to landholders other than existing crofters and the statutory successors of existing crofters, be construed as meaning the date

at which the Landholders Acts first applied to the holding: Provided always that nothing in the said subsection shall be construed as debarring a landholder from subletting his dwelling-house to holiday visitors;⁴ and provided further that the provision as to dwelling-houses in the said subsection shall not apply to a new holder,⁵ but a new holder and his statutory successors shall not, without the consent in writing of the landlord and the Board, erect or suffer to be erected on the holding more than one dwelling-house:

- (3) Nothing in subsection seven of section one of the Act of 1886⁶ shall be construed as precluding a landholder from recovering any compensation for damage by game which under section nine of the Agricultural Holdings (Scotland) Act, 1908,⁷ is recoverable by a tenant, and the last-mentioned section shall apply accordingly with the substitution of the Land Court for arbitration.

¹ See *infra*, p. 70.

² See note 6 to section 2, *supra*, p. 25.

³ This is the echo of an old agitation in which there was really very little substance. A holding within the purview of this legislation is an agricultural subject. If the land can more profitably be put to other uses it belongs for these uses to the landlord, not to the tenant who pays an agricultural rent. Accordingly it was found by the Court of Session that a crofter could not divert his holding to some non-agricultural use, such as a fishcuring yard (*Gilmour v. Peterson*, 1901, 3 F. 569). But it was never held, as was sometimes either ignorantly or unscrupulously represented, and as many crofters were led to believe, that a crofter might not carry on any such subsidiary industry as was sanctioned by custom or did not affect the character of his croft as an agricultural holding.

⁴ This is to obviate the possibility of its being suggested that such letting amounted to a subletting of the holding or part thereof.

⁵ Obviously a provision that no fresh dwelling-house was to be erected would be quite inappropriate in the case of a new holding where there was none. The prohibitions against any additional dwelling-house may cause difficulty to the landholder who desires to have two, one which he can occupy in winter and let to summer visitors, and another to which he can retire when the summer visitors arrive—not an uncommon arrangement in many districts.

⁶ See p. 71. This provision seems superfluous, as the subsection gives the landholder's landlord no right as regards game other than is enjoyed by every landlord at common law.

⁷ See p. 194.

11. *Obligations of New Holders under Public Health Act.*—

Where buildings or other premises within the meaning of the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), have been erected on a holding by or for a new holder,¹ all duties or liabilities imposed on the owner of such premises under any provision relating to the removal or remedy of a nuisance or the provision of a water supply contained in the said Act shall, so long as the landlord receives no rent or other consideration in respect of such buildings or other premises (and failing agreement with the landlord to the contrary), be transferred to and discharged by the landholder, and the said Act shall be read and construed accordingly.

¹ The protection here given seems incomplete. It is hard to see why a landlord should be held responsible in the case of buildings erected by a landholder other than a new holder in respect of which he receives no rent or other consideration.

12. *Use by Landlord of Water Rising on a Holding.*—A landlord may, on payment of compensation for any surface damage, use for any estate purpose any springs of water rising on a holding and not required for the use thereof: Provided that any dispute as to the requirements of the holding or the amount of compensation under this section shall be determined by the Land Court; and provided further that nothing herein contained shall be construed as affecting the rights of any persons other than the landlord and the landholder.

13. *Present Rent.*—The rent payable by a landholder as one of the statutory conditions shall be the present rent, that is to say, the yearly rent, including money and any prestations other than money,—

- (a) In the case of existing crofters, payable for the year current at the passing of the Act of 1886, or, where the rent so payable has been altered in terms of that Act, payable for the year current at the commencement of this Act;¹
- (b) In the case of existing yearly tenants, payable for the year current at the commencement of this Act; and
- (c) In the case of qualified leaseholders or statutory small tenants becoming landholders, and in the case of

new holders, and in the case of landholders whose holdings are enlarged, payable or fixed in respect of the last year of the lease or tenancy, or at the date of registration, or at the date of enlargement, as the case may be :

in each case unless and until the present rent is altered in manner provided by the Landholders Acts.²

¹ On one reading of this section taken along with section 6 of the Crofters Act of 1886 the crofter might be held to make a fresh start with the present rent when this Act comes into force, so that he might apply to the Land Court to have the rent altered although it had already been fixed within the last seven years, but this is not what was intended, and probably the provision in section 26 (9) is sufficient to exclude this suggestion.

² See sections 5 and 6 of the 1886 Act, pp. 75, 76.

14. *Adjustment of Rights by Land Court.*—In the case of resumption by a landlord,¹ or in the case of an existing yearly tenant or a qualified leaseholder² or statutory small tenant³ becoming a landholder, the rights of parties interested, so far as affected by the operation of this Act,⁴ at the date of resumption or date when such tenant or leaseholder becomes a landholder, as the case may be, shall in the event of dispute be adjusted by order of the Land Court, which order they are hereby empowered to pronounce on the application of any party interested.

¹ Section 18 hereof, and section 7 of the 1886 Act, pp. 45, 79.

² Section 2, p. 23.

³ Section 32, p. 63.

⁴ This refers to questions incidental to the change of tenure to that of landholder.

15. *Registration.*—(1) The procedure in connection with applications for registration of new holders under this Act shall be regulated as may be prescribed in rules of the Land Court.

(2) Registration of a new holder under this Act shall be constituted by an order of the Land Court granting registration, duly recorded, with the application on which it proceeds, in the Landholders Holdings Book.¹

¹ Kept by the Sheriff-Clerk in each county (see section 27 of the 1886 Act, p. 92). This is not to be confounded with the Register of Small Holdings under section 33 of the present Act.

16. *Amendment of Law as to Enlargement of Holdings.*—

(1) The provisions of the Act of 1886, relative to the enlargement of holdings, are hereby extended to an application for enlargement of a holding by a single landholder¹ or two or more landholders, and shall apply in the case of an application by a single landholder as nearly as may be in the same manner and to the same effect as in the case of an application by two or more landholders :

Provided that all applications for enlargement under section eleven of the Act of 1886 shall be made to the Board, and subsections seven, eight, nine, ten, eleven, twelve, thirteen, sixteen, seventeen, and eighteen of the section of this Act relative to the constitution of new holdings shall, with the necessary modifications, apply as fully for the purpose of applications for enlargement as for the purpose of the constitution of new holdings;² and the expressions “application” and “applicants,” where occurring in section twelve or section twenty-one of the Act of 1886, shall be construed as meaning an application from the Board under subsection nine aforesaid and the persons referred to in such application.³

(2) Section thirteen of the Act of 1886 with the exception of subsection (3) (e)⁴ thereof shall cease to have effect, provided that land shall not be deemed available land for the enlargement of a holding otherwise than by agreement unless it is land in respect of which a person would be admissible to registration otherwise than by agreement as a new holder under this Act,⁵ and, if arable land, unless it lies contiguous or near⁶ to land already in the occupancy of the landholder making the application; and provided further that a holding shall not be enlarged so that the rent or acreage thereof shall exceed the rent or acreage competent for a new holding under this Act.⁷

¹ Under section 11 of the Act of 1886 an application for enlargement had to be made by a body of five crofters.

² The scheme seems to be that the tenant or tenants who desire enlargement are to apply to the Board, and the Board, if it approves, is to apply on their behalf to the Land Court. It is not clear whether land can be taken from a landlord for the enlargement of a holding on another estate—probably not. Compare this subsection with section 26 (2). (See *per curiam* in *Traill's Trustees v. Grieve*, 1890, 17 R. 1115.)

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³ The "application" is that of the Board. "Applicants" are the persons on whose behalf the Board makes it.

⁴ See p. 83.

⁵ See section 7, p. 31.

⁶ "Near" is an elastic word, and no hard-and-fast rule can be laid down without regard to local conditions (*Drumchork* case, 1888, Report of C. C. Parl. Papers, 1889, c. 5634, p. 147).

⁷ See section 26.

17. *Amendment of Law as to Vacant Holdings.*—Where, by reason of renunciation, removal, failure of a statutory successor, or otherwise, a holding has at any time ceased or is about to cease to be held by a landholder, the landlord shall forthwith intimate the fact in writing to the Board, and shall not, if the Land Court on their application after hearing the landlord so determine, and during such period and subject to such conditions (which shall include payment of compensation to the landlord by the Board to such amount as may be agreed, or as, in case of dispute, may be determined by the Land Court, in respect of any loss arising out of such determination) as the Land Court may prescribe, be entitled without the consent of the Board to let the holding otherwise than to a neighbouring landholder for the enlargement of his holding, or to a new holder :¹

Provided that where, under the provisions of the Landholders Acts, the holding was, otherwise than by agreement, constituted as a new holding or enlarged, it shall be the duty of the Land Court, upon an application by the landlord, after hearing the Board, to assess any damage or injury done by the constitution or enlargement of the holding, as the case may be, to the landlord through non-payment of rent in respect of the holding, or depreciation in the letting value of the land comprised in the holding, or through the imposition of liabilities in respect of or the payment of compensation for permanent improvements thereon, and to require the Board to pay the landlord compensation in respect of such damage or injury to such amount as the Land Court determine, subject to the like procedure and right of alternative arbitration as provided in subsection (11) of section seven of this Act, but nothing in this proviso contained shall apply to the case of a holding ceasing to be held by a landholder by reason of resumption by the landlord or by reason of the sale of the holding to the landholder.²

¹ The object of this provision is to prevent the extinction of landholders' holdings through lapse to the landlord and his reletting them on another tenure. He is under no obligation to relet; but during a period to be determined by the Land Court, if he relets it must be to a landholder. There is no penalty, but any other contract of letting would not be binding. The case of a holding held under lease when the Act commences, the tenant of which quits without becoming a landholder, does not seem to be covered (see section 2 (1) (iii)).

² Where a new holding is created without the landlord's consent he is entitled to claim compensation for any loss. But if the experiment does not turn out a success, and the holding is thrown back upon the landlord's hands, he is given a second opportunity of claiming compensation. The section does not hang well together. It would seem that a landlord would have no claim if he let the holding to another landholder at a reduced rent and after paying for the improvements. He must let it fall vacant.

18. *Amendment of Law as to Renunciation of Holdings.*—Section seven of the Act of 1886¹ shall be amended by the insertion at the end thereof of the following words:—

Provided that such notice shall not, without the consent of the Land Court, be effective unless, within two months from the date of notice, the landlord or the landholder intimates the same in writing to the Board,² and provided further that except by agreement with the Board the landholder shall not without the like consent be entitled to renounce his tenancy so long as any liability owing by him to the Board is not wholly discharged.

¹ See p. 79.

² This is to prevent the landholder slipping away without the cognisance of the Board.

19. *Declaration of Law as to Resumption of Holdings.*—Without prejudice to the generality of the power to authorise resumption by the landlord for some reasonable purpose having relation to the good of the holding or of the estate, conferred by section two of the Act of 1886,¹ the feuing of land, or the occupation by a landlord for the purpose of personally residing thereon of a holding, being his only landed estate,² or the protection of an ancient monument or other object of historical or archæological interest from destruction or injury, shall respectively be deemed a reasonable purpose as aforesaid.

¹ See p. 74.

² These were probably both good purposes under the 1886 Act. The second was so held (*Slater v. Esslemont*, C. C. Report, 1898, c. 5634, p. 177).

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But in two cases resumption was refused where the owner had another bit of land (*Nistaben and Ley*, 1908 ; C. C. Report, 1909, c. 4598, pp. 80-2).

20. Amendment of Law as to Bequest of Holdings.—Section sixteen of the Act of 1886¹ is hereby amended by the substitution of “Land Court” for “sheriff” wherever occurring therein, and of the words “two months” for the words “twenty-one days” occurring in subsection (a) thereof, and shall be read and construed accordingly with the necessary modifications.

¹ See p. 85.

21. Assignment of Holding.—In the event of a landholder being unable to work his holding through illness, old age, or infirmity, he may apply to the Land Court for leave to assign his holding to a member of his family, being his wife or any person who, failing nearer heirs, would succeed him in the case of intestacy, and if, after intimation to the landlord and any other party interested, and such hearing or inquiry as the Land Court may consider necessary, it appears to the Land Court that such assignment would be reasonable and proper, it shall be competent to the Land Court to grant such leave on such terms and conditions, if any, as may to them seem fit.¹

¹ Apparently this transaction cannot be carried through without the intervention of the Land Court. The assignation must, it is thought, be complete and not limited to the landholder's lifetime. It must in fact be an anticipated bequest. The assignee is not a landholder within section 2 (2) on a strict reading of that provision, which refers to “successors in the holding being his heirs or legatees.” This would probably be got over, however, on the theory just indicated of an anticipated legacy.

22. Loss of Rights by Heir in Certain Cases.—Where, owing to the failure of the landholder to bequeath his tenancy or of the legatee to accept the bequest, the right of the tenancy devolves upon the heir-at-law of the landholder the landlord may give notice in writing to such heir, if his name and address are known to or can by due diligence be ascertained by the landlord, requiring him to state whether or not he elects to accept the tenancy, and in case such heir shall not, within six weeks after the receipt of such notice, declare that he elects to accept the tenancy, his rights to the tenancy shall pass to the next heir,¹ and the same procedure shall apply:

Provided that if such heir be furth of the United Kingdom the Land Court may grant such extension of the period hereinbefore specified as may seem to them to be reasonable.² And provided further, that if the name and address of such heir or next heir are not known to, or cannot by due diligence be ascertained by, the landlord, and no application is made by them with regard to the succession to the holding during six months after the death of the last landholder, failure of a statutory successor shall be deemed to have taken place.³

¹ The Crofters Commission held that on failure or refusal of the heir the next heir took. They also held that the next heir took when the heir was insane (*M'Lellan v. Orde*, 1897, c. 8452, p. 154).

² As in the absence of the heir there would probably be nobody to apply for him, it would seem to be reasonable that the power to extend the period should endure after the six weeks have expired.

³ Apparently, where the heir and the next heir cannot be found the holding lapses to the landlord after six months. The next heir again cannot come in. There is, however, a hiatus in the section, for it does not clearly meet the case of the address of the heir being unknown and that of the next heir being known. The right of the heir does not pass from him within the six months unless he gets notice, so as to open up the way to notice within the six months to the next heir, and this last is not indeed directed in these circumstances. It is directed by implication in the earlier part where the heir has got notice and not moved within the six weeks.

23. *Arrears of Rent to be Set off against Compensation for Improvements.*—If a landholder either renounces or is removed from his holding the landlord shall be entitled to set off all rent due or to become due against any sum found to be due to the landholder or to the Board¹ for improvements made on the holding.

¹ See section 8, p. 38.

24. *Amendment of Law as to Regulation of Common Grazings,*¹ &c.—(1) The Land Court may prescribe such regulations as to the exercise of pasture, grazing or other rights held or to be held in common under the Landholders Acts as they think expedient.²

(2) The Land Court shall cause any proceeding under the immediately preceding subsection to be intimated to any person or persons, whether landholders or not,³ using or claiming to use the pasture or grazing or other rights to which the proceeding

relates, and shall hear such person or persons on his or their application, and make such inquiry as they may deem necessary, and may make applicable to such person or persons any regulations prescribed under such proceeding: Provided that such regulations may contain provision for the removal by any person prescribed in the regulations of any stock placed on the common pasture or grazing in contravention of the regulations.

(3) Any person committing a breach of any regulations prescribed under this section or an infringement of any scheme drawn up by the Crofters Commission or the Land Court, as the case may be, under the powers conferred by section twelve of the Act of 1886,⁴ shall be liable on conviction before the sheriff under the Summary Jurisdiction Acts to a penalty not exceeding forty shillings, and in the case of a continuing offence to a further penalty not exceeding five shillings for each day during which such offence shall have been continued after written warning from the committee or from the Land Court, and any such penalty shall be recoverable by imprisonment in terms of the Summary Jurisdiction Acts.⁵

(4) The Land Court may suspend or remove members of a committee under the Act of 1891 as amended, if satisfied that they are not properly carrying out the regulations respecting a common pasture or grazing, and may appoint or provide for the appointment of other persons (whether landholders or not) in their place. Where those interested in a common pasture or grazing decline to act on such a committee, the Land Court may appoint any person or persons in the neighbourhood, whether landholders or not, with the powers and duties of such a committee. Where the Land Court are satisfied that in lieu of such a committee a grazings constable should be appointed or elected for any township or group of townships or persons interested, they may make provision accordingly, and any regulations making such provision shall be deemed to be regulations prescribed under this section, and the grazings constable may enforce such regulations, and shall be paid by assessment upon those using the pasture or grazing in manner provided by the Land Court, but not in excess of sixpence in the pound of rent.

The words "not being less than three or more than five," occurring in section two of the Act of 1891, are hereby repealed.

(5) The Land Court may, on the application of the landlord, or landlords, or any landholder, and for such period and on such conditions as they consider equitable, apportion a common grazing into separate parts for the exclusive use of the several townships or persons interested, either as arable ground or as pasture, if satisfied that such apportionment is for the good of the estate or estates, and of the holdings or tenancies concerned.

(6) The Land Court may, on the application of the landlord, or landlords, or any landholder, apportion lands held runrig among the holders thereof in such manner as appears to them in the circumstances of each case to be just and expedient.

¹ Common grazings are dealt with at much length in the Acts of 1891 and 1908 (see pp. 102-7). It seems a pity that these Acts were not repealed and new and orderly provisions made in what, as the matter only affects one part of the country, might very well have been made one of the schedules to this Act. Such elaborate directions about a subordinate and local matter are rather a disfigurement in the main body of the Acts.

² This power already existed under the Act of 1891, but the initiative lay with the crofters. The Act of 1908 first allowed the initiative to the Commission (see p. 106), but the procedure was ancillary to the appointment of a committee. According to the general scheme of this legislation the initiative, where the parties themselves did not move, ought to have been with the Board which would have applied to the Land Court. The judicial character of the Land Court seems to be rather overlooked in this section. A Court does not move unless somebody applies to it and does not issue "warnings" on its own account.

³ Under prior legislation the Crofters Commission could deal with common grazings only when all the community interested in the grazings were crofters. In many cases ordinary tenants share the privilege. These cases are now brought in.

⁴ Under this section (see p. 81) the Land Court may make regulations about seaweed, peat, etc.

⁵ Compare with 1908, section 2 (p. 106).

25. *Jurisdiction of Land Court.*—(1) The Land Court shall be a body corporate with a common seal. Judicial notice shall be taken by all courts of justice of the corporate seal of the Land Court, and any order or other instrument purporting to

be signed with it shall be received as evidence without further proof. All orders and determinations of the Land Court shall be in writing.

(2) For the purposes of the Landholders Acts, the Land Court shall have full power and jurisdiction to hear and determine all matters, whether of law or fact, and no other court shall review the orders or determinations of the Land Court :¹ Provided that the Land Court may, if they think fit, and shall, on the request of any party, state a special case on any question of law arising in any proceedings pending before them, for the opinion of either division of the Court of Session, who are hereby authorised finally² to determine the same.³

(3) The Land Court may, without prejudice to any provision contained in section seven of this Act, ascertain the facts in any case by hearing parties and examining witnesses, or by means of affidavits, or by such other mode of inquiry as they may deem appropriate, and may require the production of all books, papers, plans, and documents relating to the case, and without prejudice to the provisions of section twenty-four of the Act of 1886,⁴ they may summon and examine on oath such witnesses as they think fit to call or allow to appear before them. They may, when sitting in open court, report in writing to the Lord Ordinary on the Bills any person who has been guilty of contempt of court; and the Lord Ordinary may punish such person as if the contempt had been committed in his own court: Provided that when the chairman is so sitting he shall have the same power as the Lord Ordinary to punish contempt of court.

(4) The Land Court may determine the amount of the expenses in any proceedings before the Court and the proportion to be borne by the different parties.

(5) Three members of the Land Court shall be a quorum: Provided that it shall be lawful for the Land Court to delegate such of their powers as they think expedient to any one member or to any two members of the Court, with or without the assistance of one or more land valuers, assessors, or other skilled persons, and from time to time to revoke, alter, or modify any such delegation of powers; but any order or determination arrived at under such delegation shall be subject to review upon

appeal by three or more members of the Court (including where such court of review consists of three members not more than one member who was a party to such order or determination) sitting together, one of whom shall be the Chairman of the Land Court.

(6) An order of the Land Court may be presented to the sheriff, and the sheriff, if satisfied that the order has been duly recorded,⁵ shall pronounce decree in conformity with such order on which execution and diligence shall proceed.⁶

¹ *I.e.* on matters committed to them by the Act. See also section 25 of 1886 Act, p. 91. For the decisions in regard to the jurisdiction of the Crofters Commission, see Digest, p. 175, and see notes to sections 21 and 25 of the 1886 Act, pp. 91 and 92. It must not be taken, however, that the Land Court is in all respects *in pari casu* with the Crofters Commission. Neither body seems to be purely a judicial or purely an administrative one in substance. But the Land Court has this attribute in form and it also has it in substance to a much greater extent than had the Crofters Commission. The Land Court, however, like all other inferior Courts, can be restrained by the Court of Session from any excess of jurisdiction, and it is not the final judge of the extent of its own jurisdiction.

² Without appeal to the House of Lords.

³ If the Land Court were to refuse to state a case on the ground that in its opinion no question of law was involved, application might be made to the Court of Session for an order upon the Land Court to state a case.

⁴ See p. 92.

⁵ In the Landholders Holdings Book.

⁶ The function of the Sheriff is purely ministerial (*Argyll v. Cameron*, 1890, 17 R. 702). The circumstance that the Land Court like the Crofters Commission must go to the Sheriff to get its decrees made executive distinguishes it from the other Courts of civil jurisdiction. The nearest analogue is a presbytery.

26. Supplementary Provisions and Restrictions.—(1) For the purposes of the Landholders Acts, a holding shall be deemed to include any right in pasture or grazing land held or to be held by the tenant or landholder whether alone or in common with others, and the site of any dwelling-house erected or to be erected on the holding or held or to be held therewith, and of any offices or other conveniences connected with such dwelling-house.¹

(2) A person shall not be admissible to registration as a new holder under this Act in respect of land belonging to more than one landlord or in respect of more than one holding and

shall not be held an existing yearly tenant or a qualified leaseholder in respect thereof unless such land or holdings have been worked as one holding.²

(3) A person shall not be held an existing yearly tenant or a qualified leaseholder³ under this Act in respect of—

(a) Any land the present rent⁴ of which within the meaning of this Act exceeds fifty pounds in money, unless such land (exclusive of any common pasture, or grazing, held or to be held therewith) does not exceed fifty acres⁵ (but without prejudice to the power of the Land Court, in determining from time to time a fair rent, to fix a rent exceeding fifty pounds);⁶ or

(b) Any land being garden ground only, appurtenant to a house, or any land to which as the site of or as required for the protection of or for access to an ancient monument or other object of historical or archaeological interest the Land Court determine that the Landholders Acts should not apply; or

(c) Any land within the parliamentary, police, or municipal boundary of any burgh or police burgh; or

(d) Any land being a market garden within the meaning of the Agricultural Holdings (Scotland) Act, 1908⁷ (8 Edw. VII. c. 64); or

(e) Any land being or forming part of any glebe,⁸ or any small holding under the Small Holdings Act, 1892 (55 & 56 Vict. c. 31), or any allotment under the Allotments (Scotland) Act, 1892 (55 & 56 Vict. c. 54), or the Local Government (Scotland) Act, 1894⁹ (57 & 58 Vict. c. 58); or

(f) Any land that is not a holding within the meaning of the Agricultural Holdings (Scotland) Act, 1908¹⁰ (8 Edw. VII. c. 64); or

(g) Any land being woodland, or being or forming part of the home farm of any estate, or of any policy or park, or of any pleasure ground or other land used for the amenity or convenience of any residence or farmstead; or being permanent grass park held for the purposes of a business or calling not primarily agri-

cultural or pastoral, including that of butcher, cattle-dealer, and the like ; or

(*h*) Any land bonâ fide held and used for purposes of public recreation ; or

(*i*) Any land acquired, whether compulsorily or by agreement, for any undertaking of a public nature, under the authority of any Act of Parliament or any order having the force of an Act of Parliament.

(4) A person shall not be admissible to registration as a new holder under this Act in respect of any land referred to in paragraphs (*a*), (*b*), (*c*), (*d*), or (*e*), or, except by agreement, in respect of any land referred to in paragraphs (*g*), (*h*), or (*i*) of the immediately preceding subsection, or in respect of any holding which is not either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral.

(5) Nothing in this Act shall operate to prevent the registration of a new holder or the enlargement of a holding (whether by agreement or otherwise in either case) in respect of land comprised in a deer forest or otherwise kept or preserved mainly or exclusively for sporting purposes, but subject always to the provisions of section seven and section sixteen of this Act, as the case may be.¹¹

(6) Notwithstanding anything contained in subsection one of this section, the holding of any existing yearly tenant or qualified leaseholder within the meaning of this Act shall not for the purposes of the Landholders Acts be deemed to include any lands or heritages at the commencement of this Act forming part of such holding and occupied by a sub-tenant of such existing yearly tenant or qualified leaseholder, whether paying rent or not.¹²

(7) A person shall not be held an existing yearly tenant or a qualified leaseholder under this Act in respect of a holding referred to in section thirty-three of the Act of 1886,¹³ but nothing in that section shall operate to prevent the registration of a new holder by agreement in respect of a holding referred to therein, or the application of the Landholders Acts to such new holder and his statutory successors in respect of the holding. For the word "nor" where last occurring in that section the word "or" is hereby substituted.

(8) The provisions of section two of this Act shall extend to and include joint tenants being existing crofters,¹⁴ existing yearly tenants, or qualified leaseholders;¹⁵ but not more than one person shall be registered as a new holder in respect of any holding, and (without prejudice to the continuance of a joint tenancy through statutory successors) where at any time after the commencement of this Act a holding is held by a single landholder, or a holding which has been held in joint tenancy ceases to be so held, it shall not be competent for more than one person to be a landholder in respect of such holding.

(9) Except so far as may be inconsistent with any express provision of this Act the tenancy of a landholder under the Landholders Acts shall, in the case of every existing crofter, be deemed to be in all respects a continuance of his tenancy as a crofter under the Crofters Acts, and all contracts and other deeds and documents shall be read and construed accordingly.

(10) A person shall not be subject to the provisions of this Act regarding statutory small tenants who in terms of this section would be disqualified from being an existing yearly tenant or a qualified leaseholder.¹⁶

¹ The Crofters Commission have held that an access road over another croft may be a pertinent of a holding (cases of *M'Leod*, 1908, c. 4021, p. 53; and *Mackay*, 1909, c. 4598, p. 38).

² The Crofters Commission held that the rule for crofters was one man one croft (case of *Petrie*, 1909, c. 4598, p. 54).

³ See section 2. It should be noted that these exceptions do not, in virtue at all events of this section, apply to existing crofters.

⁴ For definition of "present rent," see section 13, p. 41.

⁵ Where the holding is under 50 acres the Act applies, no matter what the rent, but where the holding is above 50 acres the Act does not apply if the rent exceeds £50.

⁶ On a revision the rent may be raised above £50 without affecting the tenure, but the Act does not apply to a holding which falls below £50, the "present rent" having been over that sum (see *M'Kechnie v. Campbell*, 1899, 6 S. L. T. 471).

⁷ See p. 207.

⁸ The Crofters Commission held that the Act of 1886 did not apply to glebes (see p. 96, Note 2).

⁹ These Acts proved dead letters owing to the absence of financial resources other than rates.

¹⁰ See p. 207, and see the cases of *Mackintosh v. Lovat*, 1886, 14 R. 282 ; and *Taylor v. Moray*, 1892, 19 R. 399.

¹¹ Under section 13 (3) (e) of the 1886 Act (see p. 84) land in a deer forest cannot in certain circumstances be taken for the enlargement of holdings. This does not, however, apply to the creation of new holdings under this Act. The present subsection is very awkwardly expressed. It is clear that nothing in the Act can "prevent" that which the Act authorises. Accordingly if the subsection has any meaning it must authorise something which the Act itself does not elsewhere authorise. The Act does not authorise the taking of glebe land for new holdings (section 26 (3) (e)). If, as happens in some parishes, the glebe is let for sporting purposes, does this subsection authorise its appropriation? Again, the Act does not authorise the taking of land for a new holding the "present rent" of the part of which taken for the new holding is more than £50. Does this apply where the land is taken off a deer forest? The strict construction of the provision would seem to be—"You are to take sections 7 and 16 as they stand, but if you find anything in the Act which qualifies them in the case of sporting land it falls to be disregarded." In the case of enlargement the matter is further complicated by the fact that section 16 itself adopts all the restrictions elsewhere in the Acts.

¹² The yearly tenant or qualified leaseholder does not carry with him into his holding as landholder the subjects comprised in the subtenancy, and the Land Court, in default of agreement, must make an adjustment of the present rent accordingly (section 14) or fix a new rent (section 6 of the 1886 Act). Apparently the subjects of the subtenancy will then revert to the landlord unfettered, for the subtenant appears not to be a landholder (see the decision as to subtenants under the Crofters Acts, p. 176).

¹³ See p. 96.

¹⁴ The Crofters Acts make no provision for joint crofters, but the Crofters Commission held that there might be joint crofters, and that one could not deal with his interest in the croft without the consent of the other (see C. C. Reports, 1909. c. 4598, p. x., and 1910, c. 5645, pp. x. and xiii.).

¹⁵ Curious questions with reference to residence, renunciation, etc., may arise under this provision—which it would not be profitable to anticipate.

¹⁶ See section 32.

27. *Special Provision for the Island of Lewis.*—In the Island of Lewis, in so far as it lies within the county of Ross and Cromarty, a person shall not be held an existing yearly tenant or qualified leaseholder under this Act in respect of any land the present rent of which within the meaning of this Act exceeds thirty pounds in money, unless such land (exclusive of any common pasture or grazing land held or to be held there-

with) does not exceed thirty acres (but without prejudice to the power of the Land Court, in determining from time to time a fair rent, to fix a rent exceeding thirty pounds¹).

¹ In Lewis population is so dense and good land so scarce that a lower standard has to be adopted in order to afford any hope of finding land to go round. Tenants whose rent is between £30 and £50 are not to be made unassailable by being allowed to become landholders.

28. *Transfer of Powers and Duties.*—(1) From and after the commencement of this Act the Crofters Commission established by section seventeen of the Act of 1886,¹ and the Congested Districts (Scotland) Commissioners established by the Congested Districts (Scotland) Act, 1897² (60 & 61 Vict. c. 53), shall cease to exist, and all the powers and duties vested in or imposed on the Crofters Commission by any Act of Parliament in force at such date shall, subject to the provisions of this Act, be vested in, transferred to, and imposed on the Land Court, and all the powers and duties vested in or imposed on the Congested Districts (Scotland) Commissioners by the Congested Districts (Scotland) Act, 1897, shall, subject as aforesaid, be vested in, transferred to, and imposed on the Board, and, except as otherwise provided by this Act, all such powers and duties shall be exercised and performed by the Land Court or the Board, as the case may be, as nearly as may be in like manner and subject to the same conditions, liabilities, and incidents respectively as such powers and duties might before such date have been exercised and performed by such Commission or Commissioners respectively, and in the construction and for the purposes of any Act of Parliament, contract, order, regulation, decree, award, or other document made, passed, entered into, or executed, or of any action or proceeding raised before such date, the name of the Land Court or the Board, as the case may be, shall be deemed to be substituted for such Commission or Commissioners respectively.

(2) All powers and duties transferred to the Board from the Board of Agriculture and Fisheries by this Act, or any Order in Council made in pursuance thereof, shall be exercised and performed by the Board as nearly as may be in like manner and subject to the same conditions, liabilities, and incidents as

such powers and duties might before the date of transfer have been exercised and performed by the Board of Agriculture and Fisheries; and in the construction and for the purposes of any Act of Parliament, contract, order, regulation, decree, award, or other document made, passed, entered into, or executed, or of any action or proceeding raised before the date of transfer, but so far only as may be necessary for the exercise of the powers or the discharge of the duties transferred, the name of the Board shall be substituted for the Board of Agriculture and Fisheries.

¹ See p. 88.

² See p. 108.

29. *Transfer of Property.*—All property belonging to, or held in trust for, the Congested Districts (Scotland) Commissioners shall from and after the commencement of this Act pass to and vest in and be held in trust for the Board, subject to all debts and liabilities affecting the same, and, subject to the provisions of this Act, shall be held by the Board for the purposes for which it is now held or would have been held if this Act had not passed.

30. *Transfer of Officers.*—Such of the persons employed by the Crofters Commission as the Secretary for Scotland, with the consent of the Treasury, may determine shall, from and after the commencement of this Act, be attached to and be officers of the Land Court, and such of the persons employed by the Congested Districts (Scotland) Commissioners as the Secretary for Scotland, with the consent of the Treasury, may determine, shall from and after the commencement of this Act be attached to and be officers of the Board; and (without prejudice to any existing rights) persons so transferred shall thereafter, if in the case of any of such persons the Treasury so determine, be permanent civil servants of the Crown within the meaning of section seventeen of the Superannuation Act, 1859 (22 Vict. c. 26):

Provided that any officer of the Congested Districts (Scotland) Commissioners in office at the commencement of this Act who may not be appointed an officer of the Board shall receive such compensation as the Treasury may determine.

31. Definitions.—(1) In this Act—

The expression “Act of 1886” means the Crofters Holdings (Scotland) Act, 1886 (49 & 50 Vict. c. 29):

The expression “Act of 1887” means the Crofters Holdings (Scotland) Act, 1887 (50 & 51 Vict. c. 24):

The expression “Act of 1891” means the Crofters Common Grazings Regulation Act, 1891 (54 & 55 Vict. c. 41):

The expression “Act of 1908” means the Crofters Common Grazings Regulation Act, 1908 (8 Edw. VII. c. 50):

The expression “Crofters Acts” means the Act of 1886, the Act of 1887, the Act of 1891, and the Act of 1908:

The expression “statutory successor” means any person who in terms of the Landholders Acts as the case may be has succeeded or may succeed to a holding whether as heir-at-law or legatee of his immediate predecessor being a crofter or landholder in occupation of the holding:¹

The expression “termination of the lease” means the expiration of the lease through the running out of the stipulated term of endurance or through the parties, or either of them, exercising their right to take advantage of a break stipulated for in the lease or through any agreement between the parties being made, or other circumstances arising whereby the lease is terminated.

(2) In the Crofters Acts, the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896² (59 & 60 Vict. c. 37), and the Congested Districts (Scotland) Act, 1897³ (60 & 61 Vict. c. 53), the expression “holding” shall be substituted for the expression “croft,” and the expression “crofting parish” shall be construed as meaning a parish to which the Crofters Acts applied at the commencement of this Act.⁴

(3) In the Act of 1886 (except in the case of references to the passing or the title thereof and except in section thirty-two thereof) the expression “this Act” or “the Act” shall be construed as meaning the Landholders Acts.

(4) In section two of the Act of 1887 the expression “prin-

cial Act" where first occurring shall be construed as meaning the Landholders Acts, and the expression "the Crofters Holdings Act, 1886," shall be construed as meaning the Act of 1886 or this Act, as the case may be.

(5) If not inconsistent with the context, references in any Act of Parliament to a crofter shall be construed as references to a landholder within the meaning of this Act.

(6) Notwithstanding anything contained in this or any other Act the expression "lessee" in section four of the Lands Valuation (Scotland) Amendment Act, 1895, shall include a landholder in the same way and to the same effect as if a landholder were a lessee holding under a lease or agreement the stipulated duration of which is twenty-one years or under from the date of entry under the same.⁵

¹ The assignee under section 21 is here inadvertently overlooked. See note to that section. Again, under 8 (2) a successor put in place of a landholder removed by the Land Court on the application of the Board is a "statutory successor."

² See p. 214.

³ See p. 108.

⁴ See section 34 of 1886, p. 96.

⁵ The intention of this provision, which was inserted on the motion of Mr. Scott Dickson, seems to be to protect other ratepayers. Under the section in question the lessee is treated during the currency of the lease as the proprietor of the erections or structural improvements which he has made or acquired. They are entered separately in the Valuation Roll and he is rated upon them both as owner and occupant. But agricultural improvements are specially exempted from this provision, and therefore section 4 of the Valuation Act, 1905, seems to have a very limited application to landholders. This subsection seems however to settle in an oblique way in favour of the small holding the question which has been treated as open whether the rating authority could in any way get at the whole annual value of the holding when that exceeded the fair rent by reason of agricultural improvements belonging to the crofter (see *Mackay v. Sutherland*, 1897, 24 R. 737).

32. Provisions as to Statutory Small Tenants.—With respect to statutory small tenants¹ the following provisions shall have effect:—

(1) A statutory small tenant means and includes a tenant from year to year, or leaseholder, not otherwise disqualified in terms of this Act, in regard to whom

section two of this Act provides that he shall not be held an existing yearly tenant or a qualified leaseholder, and the successors of such tenant or leaseholder in the holding, being his heirs, legatees (if within the relationship specified in section sixteen of the Act of 1886²), or assignees (if assignation be permitted by the lease):

- (2) Except so far as expressly applied by this Act, the Landholders Acts shall not apply to statutory small tenants:³
- (3) A holding which is or has been held by a statutory small tenant shall not be merged in or amalgamated with any other holding as defined in the Agricultural Holdings (Scotland) Act, 1908⁴ (8 Edw. VII. c. 64), except with the sanction of the Board:
- (4) Except in any case where the landlord satisfies the Land Court that there is reasonable ground of objection to a statutory small tenant (herein-after in this section referred to as the tenant) and the Land Court find accordingly, the tenant for the time being shall, notwithstanding any agreement to the contrary, be entitled on any determination of the tenancy to a renewal thereof on the terms and conditions herein-after specified:
- (5) Except so far as varied by this section, the Agricultural Holdings (Scotland) Acts, 1908 and 1910, shall apply in the case of the tenancy of a statutory small tenant in the same manner as if the tenancy were a lease, and for the purposes of those Acts and otherwise the tenancy, as renewed from time to time, shall be deemed to be a lease current for the period of renewal:⁵
- (6) Subject to the provisions of the last-mentioned Acts and of this section, the landlord and the tenant may agree upon the terms and conditions of the renewed tenancy:
- (7) Failing agreement, the landlord or the tenant may apply to the Land Court to fix an equitable rent or to fix the period for which the tenancy is to be renewed, and the

Land Court may thereafter determine the rent to be paid by the tenant or the period of renewal or both, as the case may be.⁶

- (8) In determining the rent the Land Court shall, so far as practicable, act on their own knowledge and experience, taking into consideration all the circumstances of the case, holding, and district, including the rent at which the holding has been let, the proposed conditions of the renewed tenancy, the improvements made by the landlord and tenant respectively, and the then condition and value of such improvements; and shall fix as the rent to be paid by the tenant the rent which, in their opinion, would be an equitable rent for the holding between the landlord and the tenant as a willing lessor and a willing lessee.⁷ Provided that they shall allow no rent in respect of any improvements made by or at the expense of the tenant or any predecessor in title for which he or his predecessor, as the case may be, has not received payment or fair consideration from the landlord or his predecessor:
- (9) Subject as aforesaid, the terms and conditions of the renewed tenancy shall (except so far as agreed to be varied) be those of the determining tenancy, in the same way and to the same effect, as nearly as may be, as if the tenancy had been continued for the full period of renewal under tacit relocation, and the tenant shall be entitled, if he so desires, to a renewal on those terms and conditions:
- (10) The Agricultural Holdings (Scotland) Acts, 1908 and 1910 (1 Geo. v. c. 30), as applied by this section, shall be varied as follows (that is to say):—
- In the Second Schedule to the Agricultural Holdings (Scotland) Act, 1908 (8 Edw. VII. c. 64), the Land Court shall be substituted for the Board, and where in terms of that schedule a person is nominated as arbiter by the Land Court his remuneration shall be paid by the Land Court:⁸
- (11) In the event of the landlord on the renewal of the

tenancy failing to provide such buildings as will enable the tenant to cultivate the holding according to the terms of the lease or agreement or at any time failing to maintain the buildings and permanent improvements required for the cultivation and reasonable equipment of the holding, in so far as the tenant is not required at common law or by express agreement in writing to do so,⁹ it shall be lawful for the tenant to apply to the Land Court to so find and declare, and if the Land Court after hearing parties (if they desire to be heard) and after giving the landlord (if he so desires) an opportunity of remedying his failure as aforesaid shall so find and declare, the tenant shall as from the date specified in the finding become a landholder, and the definition of landholder in this Act shall include such tenant and his successors in the holding, being his heirs or legatees:

- (12) It shall be lawful for the Board to provide model forms of agreements for optional use by landlords and tenants under this section, provided that nothing herein contained shall make the use of any such form compulsory:
- (13) In the event of any dispute arising as to whether a person is a statutory small tenant within the meaning of this Act, it shall be competent for the Land Court to determine such question summarily:¹⁰
- (14) Subsection four of section six, section twenty, and section twenty-seven of the Act of 1886,¹¹ section two of the Act of 1887¹² down to the word "summarily," and subsection nineteen of section seven, subsection four of section eight, section twelve, section twenty-five, and subsection one of section twenty-six of this Act shall, with the substitution of "statutory small tenant" for "landholder," and "equitable rent" for "fair rent," and with any other necessary modifications, apply for the purposes of this section as they apply for the purposes of the Landholders Acts:
- (15) Without prejudice to any agreement between the parties, the Land Court may, on the application of the land-

lord, and upon being satisfied that he desires to resume the holding or part thereof for building, planting, feuing, or some other reasonable purpose having relation to the good of the holding or the estate (including any purpose specified in section nineteen of this Act), authorise the resumption thereof by the landlord, subject to the payment of the like compensation to the tenant in respect of improvements on or in connection with the land resumed, to which a tenant would be entitled under the Agricultural Holdings (Scotland) Act, 1908,¹³ on the determination of his tenancy, and in addition, where part only of the holding is resumed, to such reduction of rent as may be agreed between the parties, or, in case of dispute, determined by the Land Court.

¹ In other words, every tenant of a small holding when the Act commences who would have been a landholder if he had made or paid for the whole or the greater part of the permanent improvements on his holding becomes a statutory small tenant.

² See p. 85. Under the Agricultural Holdings Act the right of bequest is not limited to the family (see p. 200).

³ Statutory small tenants have a code of their own under this section and the provisions of the Act generally do not apply to them; but see subsection (14).

⁴ See p. 207. This subsection earmarks all existing holdings of this class as holdings which are not to be merged in other holdings without the sanction of the Board. Such a holding, if vacant, must be retained in the landlord's hands or else let as a separate holding. It cannot be let to a new statutory small tenant, for statutory small tenants are a limited class ascertained at the date of the Act, but it may be let to an ordinary tenant or to a landholder.

⁵ There is, however, nothing to forbid the formal renewal of a lease, and this is desirable when the incidents are varied.

⁶ In default of agreement all the terms of the tenancy are to remain as before except the rent and the endurance, which may be fixed by the Land Court (subsection (9), *supra*).

⁷ The intention of this long direction seems to be to establish a standard other than that of "fair rent," which has come to be understood as a non-competitive rent fixed upon the footing that the improvements have been made by the tenant and must be maintained by him. One of the objects, if not the chief object, of the Crofters Act of 1886 was to relieve the economic pressure under which "willing" tenants were ready to offer rents which, in the absence of such pressure, a prudent tenant would not

have given for the land. To have fixed the rents at the amount which the croft would have brought if offered in the market would have been to nullify the Act. The croft was a necessity to the man who had nowhere else to turn and no roof elsewhere to shelter him. These considerations do not apply in the same way to the tenants on lowland estates.

⁸ See p. 210. This curious provision as to the Land Court paying the remuneration of an arbiter will tend to discourage endeavours to come to an agreement to appoint an arbiter without going to the Court.

⁹ The whole question of buildings for the holding will come up at a renewal of tenancy. In the interval it is only a question of maintenance of existing buildings. There is no provision as to fences, and the statutory small tenant must maintain these except so far as the terms of the lease subsisting when the Act commenced imposes an obligation upon the landlord.

¹⁰ See section 23 of 1886, note 5, p. 91.

¹¹ See pp. 76, 89, 92.

¹² See p. 99.

¹³ See p. 190.

33.—(1) *Register of Small Holdings.*—It shall be the duty of the Board to compile and from time to time to revise a register of small holdings (whether held by landholders or statutory small tenants or not¹) throughout Scotland, in such form and containing such particulars as may be approved by the Secretary for Scotland.²

(2) For the purposes of this section the expression “small holding” means any holding within the meaning of the Agricultural Holdings (Scotland) Act, 1908³ (8 Edw. 7, c. 64), which either does not exceed fifty acres, or if exceeding fifty acres, is of an annual value as entered in the valuation roll not exceeding fifty pounds.

(3) Where a landlord and a tenant agree or the Land Court decide that the tenant is a landholder or a statutory small tenant, as the case may be, within the meaning of this Act, it shall be the duty of such landlord and tenant and of the Land Court to communicate such agreement or decision to the Board for the purposes of the small holdings register: Provided that a person shall not be held a landholder or a statutory small tenant by reason only that he is entered as such on the small holdings register.

¹ It is a puzzling question whether this section applies to holdings under section 35 hereof and section 33 of 1886. “Nothing in the Acts” is to apply to them. The section applies to holdings excepted by section 26 hereof.

² This is not to be confounded with the Landholders Holdings Book kept by the Sheriff Clerk in each county.

³ Registration or non-registration is not to affect title.

34. Act to Apply to Crown Land.—This Act shall apply to lands vested in His Majesty in right of the Crown, and under the management of the Commissioners of Woods to such extent as the Commissioners of Woods may agree, but shall not apply to lands which are held by or on behalf of the Admiralty, War Office, or any other Government Department or which under statutory powers have been acquired, or subjected to servitudes or restrictions for the purposes of the Naval or Military Forces of the Crown.

35. Small Holdings may be Constituted Outside the Act.—Nothing in this Act contained shall prejudice or in any way affect the right of any owner of land at any time after the commencement of this Act, to constitute and equip a small holding, as defined in the section of this Act providing for a register of small holdings,¹ and to let such holding to any person at such rent, for such period, and on such terms and conditions as may be agreed on between them, and none of the provisions of this Act shall, except by the joint consent of such owner and such person, apply to such holding.² Provided that as regards land comprised in a scheme referred to in an intimation to a landlord made in terms of subsection nine of section seven of this Act the said right shall not, while such scheme is under consideration, be exercised without the consent of the Land Court.

¹ Section 33 *supra*.

² This provision seems natural enough, and yet in a way it is curious. A landlord created a small holding and let it for five years in 1908; on the expiry of the lease the tenant can now claim to remain permanently. The landlord creates a small holding in 1912 and lets it for five years; the tenant must clear out at the expiry of the term if the landlord so wills it. The view of public policy which alone could justify the former provision seems to be lost sight of in the latter.

36. Short Title and Construction.—This Act may be cited as the Small Landholders (Scotland) Act, 1911, and shall be read

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and construed with the Crofters Acts; and the Crofters Acts and this Act may be cited as the Small Landholders (Scotland) Acts, 1886 to 1911.

37. *Extent of Act.*—This Act shall extend to Scotland only.

38. *Commencement of Act.*—This Act shall commence on the first day of April nineteen hundred and twelve.

39. *Repeal.*—The Acts specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule:

Provided that such repeal so far as relating to lighthouses shall not operate so as to preclude the Board from maintaining or from defraying the expense of maintaining any lighthouse at the passing of this Act maintained by or at the expense of the Congested Districts (Scotland) Commissioners, unless and until the expense of such maintenance is by arrangement with the Board (which the Board are hereby empowered to enter into on such terms as may be agreed) undertaken by some other authority.

SCHEDULES.

FIRST SCHEDULE.

The Acts specified in Part II. of the First Schedule to the Board of Agriculture Act, 1889, and any enactment amending or extending the same.

The Sale of Food and Drugs Acts, 1875 to 1907.

The Destructive Insects and Pests Acts, 1877 and 1907.

The Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891.

The Merchandize Marks (Prosecutions) Act, 1894.

The Light Railways Act, 1896.

The Fertilizers and Feeding Stuffs Act, 1906.

The Agricultural Holdings (Scotland) Acts, 1908 and 1910.

The Housing and Town Planning Act, 1909.

The Development and Road Improvement Funds Acts, 1909 and 1910.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
49 & 50 Vict. c. 29.	Crofters' Holdings (Scotland) Act, 1886.	In section two, the words "for fishermen" and "connected with the fishing industry." In section three, the words "shall forfeit his tenancy and." Section four. In subsection three of section six, the words "at the next payment of rent." In section eleven, the words "five or more," the words "to the Crofters Commission," and the word "crofting" wherever that word occurs. In section twelve, the word "crofting."

Session and Chapter.	Short Title.	Extent of Repeal.
		Subsection (1), subsection (2), paragraphs (a), (b), (c), and (d) of subsection (3), and subsections (4) and (5) of section thirteen. In section fourteen, the words "for the purposes of a deer forest, or of a grouse moor, or for other sporting purposes." Section seventeen. Section nineteen, from the beginning thereof to the word "aforesaid," and from "who" to "Act." Section twenty-two. Section twenty-three. Section twenty-four, from "and it" to end of section. Section twenty-eight. In section thirty-two, the words "in all or any of the counties to which this Act applies and." In section thirty-four, from "'crofter' means" to "in money at the commencement of this Act"; and from "'holding' means" to "appurtenant to a house."
50 & 51 Vict. c. 24.	Crofters' Holdings (Scotland) Act, 1887.	In section two, the words from "within" to "after the passing of this Act," and from "and they" to "case." The whole Act.
51 & 52 Vict. c. 63.	Crofters' Commission (Delegation of Powers) Act, 1888.	
54 & 55 Vict. c. 41.	Crofters' Common Grazings Regulation Act, 1891.	In section two, the words "in any township or townships situated in a crofting parish or parishes within the meaning of the principal Act"; and the words "of the township."
59 & 60 Vict. c. 37.	Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896.	In subsection two of section four, the words "for the improvement of congested districts in the Highlands and Islands of Scotland."
60 & 61 Vict. c. 53.	Congested Districts (Scotland) Act, 1897.	Section one. Section two. Subsections (1) and (2) of section three. In subsection (1) (d) of section four, the words "from congested districts to other districts in Scotland." In subsection (1) (f) of section four, the word "lighthouses." Section eight.

II.

THE CROFTERS' HOLDINGS (SCOTLAND) ACT, 1886, AS AMENDED.¹

[49 & 50 VICT. CHAP. 29.]

ARRANGEMENT OF SECTIONS.

I. *Security of Tenure.*

Section.

1. A landholder shall not be removed except for breach of statutory conditions.
2. Provision for resumption by landlord.
3. Removal of landholder for breach of conditions.

II. *Rent.*

- [4. Present rent.]
5. Rent altered by agreement.
6. Fixed rent.

III. *Renunciation of Tenancy.*

7. Renunciation of tenancy.

IV. *Compensation for Improvements.*

8. Compensation to landholder for improvements on removal.
9. Compensation to cottar for improvements on removal.
10. Principle of valuation.

V. *Enlargement of Holdings.*

11. Application by landholders for enlargement.
12. Intimation to landlords.

¹ The repealed sections and words are printed within square brackets, and the amendments made by the 1911 Act such as substituting "landholder" for "crofter" are given effect to.

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Section.

13. Available land.
14. Deduction from rent in case of lands held for sporting purposes.
15. Assigned land.
16. Bequest of holding.

VI. *Land Court.*

- [17. Appointment of three Commissioners.]
18. Land Court to make report of their proceedings.
19. Area covered by the Act.
20. Procedure in fixing fair rent.
21. Procedure in enlarging holdings.
- [22. Duration of powers as to enlargement of holdings.
23. Delegation of Commissioners' duties.]
24. Taking evidence and expenses before Land Court.
25. Finality of Land Court's decision.
26. Use of Sheriff Court-houses.
27. Record of proceedings ; transmission of applications by Sheriff-Clerk ; Sheriff-Clerk's remuneration.
28. Execution of orders made by Land Court.
29. Forms of procedure.
30. Sole arbiter may be chosen.
31. Saving of 46 & 47 Vict. c. 62.
32. Loans for the purchase and equipment of fishing boats.
33. Saving in case of holdings in possession of servants.
34. Definitions.
35. Short title.

SCHEDULE.

An Act to amend the Law relating to the Tenure of Small Holdings in Scotland and for other purposes relating thereto.

[25th June 1886.]

I. *Security of Tenure.*

1. *A Landholder shall not be Removed except for Breach of Statutory Conditions.*—A landholder shall not be removed from the holding of which he is tenant except in consequence of the breach of one or more of the conditions following (in the Landholders Acts referred to as statutory conditions¹), but he shall have no power to assign his tenancy.

- (1) The landholder shall pay his rent at the terms at which it is due and payable; ²
- (2) The landholder shall not execute any deed purporting to assign his tenancy; ³
- (3) The landholder shall not, to the prejudice of the interest of the landlord, persistently ⁴ injure the holding by the dilapidation of buildings, or, after notice ⁵ has been given by the landlord to the landholder not to commit, or to desist from, the particular injury specified in such notice, by the deterioration of the soil:
- (4) The landholder shall not, without the consent of his landlord in writing, subdivide ⁶ his holding or sublet ⁷ the same or any part thereof, or erect or suffer to be erected thereon any dwelling-house otherwise than in substitution for those already upon the holding at the time of the passing of this Act: ⁸
- (5) The landholder shall not persistently ⁹ violate any written condition signed by him for the protection of the interest of the landlord or of neighbouring landholders which is legally applicable to the holding; ¹⁰ and which the Land Court shall find to be reasonable: ¹¹
- (6) The landholder shall not do any act whereby he becomes notour bankrupt ¹² within the meaning of the Bankruptcy (Scotland) Act, 1856 (19 & 20 Vict. c. 79), and the Debtors (Scotland) Act, 1880 ¹³ (43 & 44 Vict. c. 34), and shall not execute a trust-deed for behoof of creditors:
- (7) The landlord, or any person or persons authorised by him in that behalf (he or they making reasonable compensation for any damage to be done or occasioned thereby), shall have the right to enter upon the holding for any of the purposes following (that is to say):
 - Mining or taking minerals, or digging or searching for minerals;
 - Quarrying or taking stone, marble, gravel, sand, clay, slate, or other workable mineral;
 - Cutting or taking timber or peats, excepting timber and other trees planted by the landholder or his

predecessors in the holding, being of the same family,¹⁴ or that may be necessary for ornament or shelter, and excepting also such peats as may be required for the use of the holding;¹⁵

Opening or making roads, fences,¹⁶ drains, and water-courses;

Passing and repassing to and from the shore of the sea or any loch, with or without horses and carriages, for exercising any right of property or other right belonging to the landlord;

Viewing or examining at reasonable times the state of the holding, and all buildings or improvements thereon;

Hunting, shooting, fishing, or taking game or fish, wild birds, or vermin. The word "game" for the purposes of this subsection means deer, hares, rabbits, pheasants, partridges, quails, landrails, grouse, blackgame, capercaillie, ptarmigan, woodcock, snipe, wild duck, widgeon, and teal;¹⁷

And the landowner shall not obstruct the landlord, or any person or persons authorised by him in that behalf as aforesaid, in the exercise of any right reserved or conferred by this subsection.¹⁸

(8) The landholder shall not, on his holding, without the consent of his landlord, open any house for the sale of intoxicating liquors.¹⁹

¹ For additional statutory conditions, see section 10 of 1911 Act, p. 39.

² This must be read under reference to section 3. It is clear from that section that mere failure in punctual payment is not a breach of a statutory condition entitling the landlord to remove the landholder.

³ Except with the permission of the landlord, or under section 21 of 1911, p. 46. The invalidity of the assignation would be no answer to the landlord's action on the irritancy.

⁴ The word "persistently" suggests continuance after warning (*Sharp v. Mackay*, 1897, 13 S. C. R. 365; *Stewart's Trustees v. Meil*, 1891, 7 S. C. R. 217), but an argument to the contrary may be based upon the express reference to notice by the landlord in the succeeding clause of the sentence. There can be no doubt that by wilful refusal or failure after warning to put the buildings in repair, the landholder would incur this irritancy. As to keeping an insufficient stock, see *Stewart's Trustees v. Meil*, *ut sup.*

⁵ The notice by the landlord must not be directed generally against bad husbandry, but must specify the particular injury complained of.

⁶ This refers to subdivision by giving over a part of the holding to another tenant. The landholder is not entitled to give over a part of his holding in this way even to an employee of his own, and it does not elide the irritancy that the return is in services not in money (*Abinger v. Cameron*, 1888, 15 R. 598). But when the subdivision occurred before the Act of 1886 was passed, and the landholder did no more than fail to interfere with the *status quo*, the irritancy was not incurred (*ibid.*). It has been held in the Sheriff Court that the giving of gratuitous permission to other parties to raise crops upon the holding is not subdivision (*Irvine v. Henderson*, 1892, 8 S. C. R. 243).

⁷ As to letting of dwelling-house to summer visitors, see section 10 (2) of 1911 Act, p. 39.

⁸ See *ibid.* as to meaning of "the passing of this Act" in the case of landholders other than crofters, and also as to the erection of dwelling-houses by new holders.

⁹ See note 4, *supra*.

¹⁰ Violation of any agreement with the landlord on some other matter having no reference to the holding will not occasion this irritancy.

¹¹ There is room for argument, that where the landholder has signed an agreement it must stand until it is quarrelled, and that therefore it is for the landholder to go to the Land Court to get them to declare the "written condition" unreasonable; but it is not by any means clear that this is the sound interpretation of the provision, and therefore the landlord ought not to take action upon the breach until he has in his hands the declaration of the Land Court that the condition is reasonable.

¹² Cf. section 3 of the Act of 1887 (see p. 101), which protects the landholder from becoming notour bankrupt in virtue of proceedings taken for recovery of rent before the Land Court has disposed of his application. "If from some accidental pressure of circumstances a tenant becomes bankrupt, and immediately thereafter is in a position to retrieve the misfortune, the Court may hold that he has not incurred an irritancy in the sense of the ordinary irritant clause" (Rankine on *Leases*, 469. Per Hope (L.J.-C.) in *Anstruther v. Greenshields*, 1855, 18 D. 59. Followed under the Crofters Act, in *Argyll v. Macallum*, Sheriff Court at Oban, March 1889. Cf. *Hay v. Sinclair*, 1892, 8 S. C. R. 241). The trustee in the landholder's bankruptcy has no title to remove him (*Mackenzie v. Munro*, 1894, 22 R. 45).

¹³ See section 7 of the former, and section 6 of the latter Act.

¹⁴ See note 2 to section 6.

¹⁵ At present, or in the early future.

¹⁶ Landholders are not proprietors, and they cannot compel the owner of land contiguous to their holding, whether their own landlord or not, to concur with them in the erection of march fences (*M'Donald v. Dalgleish*, 1894, 21 R. 900).

¹⁷ As to damage by game, see section 10 (3) of 1911 Act, p. 39.

¹⁸ It should be observed that these provisions do not abridge any other proprietary rights which the landlord may have at common law, but resistance on the part of the landholder to the exercise of any right

by the landlord other than those here enumerated will not infer an irritancy.

¹⁹ That is, "open" where there had been none before.

2. *Provision for Resumption by Landlord.*—Notwithstanding the provisions contained in the preceding section, the Land Court may, on the application of the landlord, and upon being satisfied that he desires to resume the holding, or part thereof, for some reasonable purpose,¹ having relation to the good of the holding, or of the estate, including the using, letting, or feuing the land proposed to be resumed, for the building of dwellings, or for small allotments [for fishermen], or for harbours, piers, boat shelters, or other buildings [connected with the fishing industry], or for churches or other places of religious worship, or for schools, or for planting, or for roads practicable for carriages from the croft or crofts to the high road or the sea-shore, authorise the resumption thereof by the landlord, upon such terms and conditions as the Land Court shall think fit, and may require the landholder to surrender his holding, in whole or in such part, to the landlord, upon the landlord making adequate compensation² to the landholder, either by letting to him other land of equivalent value in the neighbourhood, or by reduction of rent, or by compensation in money, or otherwise as the Land Court shall determine.

¹ Certain purposes are expressly declared to be reasonable by section 19 of the 1911 Act, p. 45. Other grounds which have been held sufficient are the making of roads, access to piers, the building of a mansion-house, the provision of a site for a shop, and the division of runrig lands. Sale to a railway company for the construction of a railway has been held to be a reasonable purpose, and when the landlord has received notice under the Lands Clauses Act, and the authorisation of the Land Court to resume, the landholder has no *locus* to object to the transaction (*Macmillan v. Cameron*, 1897, 5 S. L. T. 152). The appropriate remedy to the landholder, part of whose holding is taken, so far as regards the bulk of his claim, is a reduction of rent (*Cameron v. Stewart*, C. C. Report for 1898, Parl. Papers, 1899, c. 9303, p. 48).

² This section seems to contemplate some compensation further than for unexhausted improvements, which are elsewhere provided for. The landholder has no other proprietary right in his holding other than the value of these improvements, and accordingly the compensation here provided must be for the loss and inconvenience attending the removing, due regard being had to the difficulty, or the reverse, of obtaining another suitable holding in the neighbourhood. Cf. section 14 of 1911 Act, p. 42.

3. Removal of Landholder for Breach of Conditions.—When one year's rent¹ of the holding, but less than two years' rent, is due and unpaid, the landholder shall be liable to be removed in manner provided by section 17 of the Agricultural Holdings (Scotland) Act, 1908² (46 & 47 Vict. c. 62).

When two years' rent¹ of the holding is due and unpaid, or when the landholder has broken any other of the statutory conditions,² he [shall forfeit his tenancy, and] shall be liable to be removed in manner provided by the fourth section of the Act of Sederunt anent Removing, of the fourteenth day of December one thousand seven hundred and fifty-six.

¹ Notwithstanding the definition of the word "rent" given in section 13 of the 1911 Act, it is thought that the provisions of section 3 apply only to liquid rent in money or kaim, and that whilst removal can be enforced when this is unpaid, notwithstanding that prestations such as services may be performed, removal cannot be enforced when the liquid rent is paid, although the other prestations may be unperformed (see *Morton v. Murray*, 1793, Mor. 13,872; *Dennison v. Wilson*, 1888, 4 S. C. R. 266).

² Summary ejection is not competent (*Mackenzie v. Munro*, 1894, 22 R. 45).

³ See section 1.

II. *Rent.*

[4. Present Rent.—The rent payable, as one of the statutory conditions, shall be the present rent, that is to say, the yearly rent, including money and any prestations other than money, payable for the year current at the passing of this Act, unless and until the present rent is altered in manner provided by this Act.]¹

¹ See section 13 of 1911 Act, p. 41.

5. Rent Altered by Agreement.—The rent may be altered by agreement between the landlord and the landholder to such amount and for such period as may be agreed on; and the rent so agreed on shall be the rent payable by the landholder so long as such agreement subsists, and after the expiry thereof so long as no different rent shall have been fixed by the Land Court upon the application of the landlord or the landholder, and so long as no new agreement between the landlord and the landholder shall have been made.¹

¹ There seems no limit to the endurance of an agreement for an altered rent. But it is not clear whether an agreement may be made for a certain

term which does not involve an alteration of amount of rent. It is thought that when the rent has been altered by agreement for a certain term the parties may renew the agreement without again altering the rent. It is more doubtful whether an agreement may be made to continue the "present rent" as defined in section 13 of the 1911 Act, p. 41, for a definite term, so as to exclude revision by the Land Court during that term.

6. Fixed Rent.—(1) The landlord or the landholder may apply to the Land Court to fix the fair rent to be paid by such landholder to the landlord for the holding, and thereupon the Land Court, after hearing the parties, and considering all the circumstances of the case, holding, and district, and particularly after taking into consideration any permanent or unexhausted improvements¹ on the holding and suitable thereto which have been executed or paid for by the landholder or his predecessors in the same family,² may determine what is such fair rent, and pronounce an order accordingly.³

(2) The rent fixed by the Land Court (in the Landholders Acts referred to as the fixed rent) shall be deemed to be the rent payable by the landholder as from the first term⁴ of Whitsunday or Martinmas next succeeding the decision of the Land Court, and shall come in place of the present rent, and save by mutual agreement the fixed rent shall not be altered for a period of seven years from such term.⁵

(3) Where the Land Court shall fix a rent⁶ which shall be less in amount than the present rent, the landholder shall be entitled [at the next payment of rent] to deduct from the amount of the fixed rent such sum or sums as he may have paid over and above the amount of the fixed rent in respect of the period between the date of the notice of application to fix the fair rent and *the first term of Whitsunday or Martinmas next following*⁷ the date when such rent was fixed.⁸

(4) When an application is lodged with the Land Court to fix a fair rent, it shall be in the power of the Land Court, either under the same or under another application of the landholder, to sist all proceedings for the removal of the landholder in respect of non-payment of rent till the said application is finally determined, upon such terms as to payment of rent or otherwise as they shall think fit.⁹

(5) In the proceedings on such application,¹⁰ the Land Court shall take an account of the amount of arrears of rent due or to become due before the application is finally determined, and may take evidence of all the circumstances which have led to such arrears, and shall decide whether, in view of such circumstances, the whole or what part of such arrears ought to be paid, and whether in one payment or by instalments, and at what dates the same should be paid; and the amount and dates so fixed shall be deemed to be the total amount of such arrears due by the landholder, and the terms at which the same became payable.¹¹

¹ The Land Court will take into account any consideration which may have been allowed to the landholder by the landlord in respect of the execution of the improvement. See note 3, *infra*. This subsection may be contrasted with section 8 (c). In virtue of the latter, the landholder when quitting is not to be paid for improvements executed in virtue of a written obligation; but in fixing a fair rent, the improvements are not necessarily excluded from consideration, although executed under a written obligation (see 1888 Report of C. C., Parl. Papers, 1889, c. 5634, p. 102). As to whether the fixed rent is the annual value of the holding for the purposes of assessment, see *Mackay v. Assessor of Sutherland*, 1897, 24 R. 737. See also section 31 (6) of 1911 Act, p. 59. As to how rates are to be treated in fixing rent in crofting parishes, see p. 217.

² "Family" is defined in section 16 as "wife or any person who, failing nearer heirs, would succeed to the landholder in case of intestacy"; but that definition has reference to the provisions of section 16 alone, and does not apply generally throughout the Act. Section 16, however, deals with succession to the landholder, and as "family" is there defined with reference thereto, it may fairly be argued that in a section dealing with succession by the landholder, "family" should be interpreted with reference to such succession. If this be sound, then, on the analogy of section 16, "family" here means "wife or any person to whom the landholder might, failing nearer heirs, have succeeded in case of intestacy." This would include blood relations through the mother as well as through the father.

³ "The object is to get at a rent which in point of fact is fair, and, in attaining that object, everything must be kept in view which affects its fairness as between the parties. Such matters as the wealth of the landlord and the poverty of the landholder do not touch the fairness of the rent. But the question, What improvements have been effected? does touch the fairness very closely. The landholder should pay rent on improvements made by the landlord; he cannot in fairness be asked to pay rent on improvements made by himself. If, however, the landholder made them in virtue of a written agreement to do so, then the Land Court must consider whether he has received an equivalent in fact and as a matter of

fairness. When the landholder has received his fair equivalent for such improvements, they have been practically sold to the landlord, and rent should be paid on them—otherwise not.” (Opinion of the Commissioners, 1887 Report, Parl. Papers, 1888, c. 5247, p. 102.)

⁴ That is, “payable for the period after the first term.” At the first term the landholder pays the old rent, except as provided in subsection 3.

⁵ After the expiry of seven years a fresh application may be made to the Land Court (*Reid v. Sharp*, C. C. Report for 1895, Parl. Papers, 1896, c. 8044, p. 39).

⁶ The rule laid down in this subsection applies in the case of an application to raise the judicial rent (*Moor v. Garson*, C. C. Report for 1898, Parl. Papers, 1899, c. 9303, p. 48).

⁷ The words in italics were not in the Act originally, but were read into it by 50 & 51 Vict. c. 24, s. 4.

⁸ It was held in the Sheriff Court in Orkney (*Burroughs v. Work*, 1889, 33 Journal of Jurisprudence, p. 166) that a landholder could not claim the benefit of this provision if he had not actually paid his rent pending the application. It is thought, however, that the intention is simply to make the fixed rent draw back to the application, and that the landholder, if willing to pay up, is entitled to settle on that footing. Construing the same subsection, Sheriff-Substitute Blair held that all payments made subsequent to the date of the application to the Land Court are to be held as referable to the current rents, not to prior arrears, and that the tenant is to be credited with the full amount of arrears cancelled in the same way as if he had actually paid that amount, but neither of these opinions are here concurred in (*Lovat v. Fraser*, 1887, 33 Journal of Jurisprudence, p. 223).

⁹ On the order of the Land Court being produced to the Court before which the removing is in dependence, an interlocutor will be pronounced sisting the process. Power is given by the 1887 Act, s. 2, to prohibit the sale of the landholder's effects under proceedings for recovery of rent, until his application has been disposed of.

¹⁰ That is, an application to fix a fair rent.

¹¹ The jurisdiction of the ordinary Courts of law to grant decree for payment of arrears is not suspended by this provision, whether the application to fix the rents has been made by the tenant (*Fraser v. Macdonald*, 1886, 14 R. 181; *Stuart & Stuart v. McLeod*, 1891, 19 R. 223, Lord Wellwood) or by the landlord (*Gordon Cathcart v. Macpherson*, 29th January 1889, Lord Trayner). But diligence upon such a decree against the landholder's effects may be stayed by the Land Court (1887 Act, s. 2). The debt is a contingent one, and not a warrant for sequestration during the dependence of the application to the Land Court (*Stuart & Stuart v. McLeod*, *cit.*). Under this clause the Land Court have a practically unlimited discretion to decide whether arrears due prior to the fixing of a fair rent are to be paid at all, and if so, whether in whole or in part. In case the landlord begins an action of removal for non-payment of rent after the fair rent is fixed, the amount of arrears as fixed by the Land Court will be considered in relation to the fair rent in determining the landlord's right to have the tenant removed.

If proceedings to remove the tenant for non-payment of rent have been stayed by the Land Court, these may be resumed when the rent is fixed. If the arrears have been reduced by the Land Court, regard must be had to the reduced amount in determining whether the amount in relation to rent now warrants removal; but whether the amount is to be measured in relation to the fair rent, or to the rent when the action was raised, is left in uncertainty. It would be well, it is thought, for the landlord to begin proceedings *de novo* after the amounts of the arrears and of the fair rent have been fixed.

III. Renunciation of Tenancy.

7. *Renunciation of Tenancy.*—A landholder shall be entitled, upon one year's notice in writing to the landlord, to renounce his tenancy as at any term of Whitsunday or Martinmas, *provided that such notice shall not, without the consent of the Land Court, be effective unless within two months from the date of notice the landlord or the landholder intimates the same in writing to the Board, and provided further that, except by agreement with the Board, the landholder shall not, without the like consent, be entitled to renounce his tenancy so long as any liability owing by him to the Board is not wholly discharged.*¹

¹ The words in italics are read in by section 13 of the 1911 Act.

IV. Compensation for Improvements.

8. *Compensation to Landholder for Improvements on Removal.*—When a landholder renounces his tenancy¹ or is removed from his holding,² he shall be entitled to compensation³ for any permanent improvements,⁴ provided that—

- (a) The improvements are suitable to the holding;
- (b) The improvements have been executed or paid for by the landholder or his predecessors in the same family;⁵
- (c) The improvements have not been executed in virtue of any specific agreement⁶ in writing under which the landholder was bound to execute such improvements.⁷

¹ Section 7.

² Sections 1-3.

³ In addition to compensation recoverable only under the Agricultural Holdings Act, see section 31. The claim does not form part of the executry estate of a landholder who died in possession, and only emerges on his successor's renunciation or removal (*Macleod v. Macrae*, 1890, 6 S. C. R. 262).

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¹ See section 24 and schedule.

² See note 1 to section 5.

³ Section 1 of the Agricultural Holdings Act of 1883 spoke of a "particular agreement" and "special compensation." See *Hay's Manual* before the C. C. 1910 Report, 1911, c. 364k, p. 91.

⁴ See note 1 to section 5.

9. *Compensation in Value for Improvements on Removal.*—When a tenant¹ of one paying rent² is removed from his dwelling and any lands or buildings occupied in connection therewith, or if paying rent renounces his tenancy or is removed he shall be entitled to compensation for any permanent improvements provided that—

- (a) Such improvements are suitable to the subject;
- (b) Such improvements shall have been executed or paid for by the tenant or his predecessors in the same family;³
- (c) Such improvements have not been executed in virtue of any specific agreement⁴ in writing under which the tenant was bound to execute such improvements.

The provisions of the preceding section and of this section shall not apply to any buildings erected by a landlord or a tenant in violation of any enactment or other judicial order.

¹ The Crofters' Commission found that the executor of a tenant had no claim under this Act. C. C. Report for 1886, Parl. Papers, 1887, c. 548g, p. 133.

² The tenant who pays no rent is not to be entitled to claim compensation for buildings erected or other improvements effected upon simple tolerance, when he chooses voluntarily to quit the holding.

³ See note 2 to section 5.

⁴ See note 3 to preceding section.

10. *Principle of Valuation.*—Improvements shall be valued under this Act as such sum as fairly represents the value of the improvement to an incoming tenant, provided that, in fixing the amount of compensation payable, the value of any assistance or consideration which may be proved to have been given by the landlord or his predecessors in title, in respect of such improvements, shall be taken into account, and deducted from such compensation, and the value of any deterioration committed or permitted by the tenant within the four years preceding shall also be deducted from the said compensation.¹

¹ Claims at common law for deterioration of older standing are not affected by this provision, but these claims must be made good in some other process. No specific provisions are made with reference to the manner in which compensation is to be recovered under these sections ; but it was held that the duty of investigating claims and awarding compensation in the case alike of landholders and cottars was entrusted to the Land Court, and that the jurisdiction of the ordinary Courts of law was excluded (*M'Dougall v. M'Alister*, 1890, 17 R. 555).

V. *Enlargement of Holdings.*¹

11. *Application by Landholders for Enlargement.*—It shall be lawful for any [five or more] landholders resident on neighbouring² holdings in a [crofting] parish, where any landlord or landlords, after application made to him or them, have refused to let to such landholders available land on reasonable terms, for enlarging the holdings of such landholders, to apply [to the Crofters Commission] setting forth that, in the said parish or in an adjacent [crofting] parish, there is land available for the enlargement of such holdings which they are willing to take on lease,³ but which the landlord or landlords refuse to let on reasonable terms ; that is to say, on such terms as are usually obtained in the letting of land of the like quality, and similarly situated, in the same district for other purposes than that of a deer forest, or of a grouse moor, or other sporting purpose.⁴

¹ These sections dealing with enlargement are amended by section 16 of the 1911 Act, p. 43.

² But not necessarily contiguous.

³ That is, on the peculiar form of tenure introduced by this legislation. See sections 15 and 19 (*M'Kenzie v. Jamieson*, C. C. Report for 1896, Parl. Papers, 1897, c. 8452, p. 142. See section 12, note 3).

⁴ The landlord is not entitled to withhold land on the ground that a higher rent can be got for sporting purposes ; but see *infra*, section 13 (3) (e).

12. *Intimation to Landlords.*—The Land Court shall, upon receiving such an application¹ as aforesaid, intimate the same to the landlord or landlords therein alleged to have refused to let available land for the enlargement of such holdings as aforesaid, and shall afford such landlord or landlords, and the landholders by whom the application¹ is made, an opportunity of being heard thereupon, and shall ascertain as far as possible how far the small size of the holdings has been due to the action of the landlord or of the landholders,² and shall make such other

inquiry as to them shall appear necessary or proper; and if they are satisfied—

- (1) That there is land in the parish, or in an adjacent [crofting] parish, available for enlarging the holdings of the said landholders, but that the landlord or landlords refuse to let the same for that purpose on reasonable terms;
- (2) That the applicants¹ are willing and able to pay a fair rent therefor, and that in the event of an order for the letting thereof being made, the applicants¹ are able properly to cultivate the same in so far as it consists of arable land, and properly to stock the same in so far as it consists of pasture land;³

the Land Court may make an order for a lease⁴ of the said land, or such part or parts thereof as they may think proper, to the applicants,¹ or one or more of them, at a fair rent,⁵ and upon such terms and conditions as the Land Court shall consider just.

It shall be competent for the Land Court, by an order under this section, to provide, if this shall appear to them to be just and expedient, for admitting the landholders who applied as aforesaid,⁶ to participate in common pasture occupied by other landholders, or for conferring upon the applicants¹ rights of pasturage common as among themselves over available land specified in the order, upon such terms and conditions as the Land Court shall determine.

It shall be competent for the Land Court to draw up a scheme regulating the use by landholders on the same estate of seaweed for the reasonable purposes of their holdings, peat bogs, and heather, or grass used for thatching purposes, and to include the charge for all these in the fixed rent.⁷

¹ See as to the use here of the term "application" and "applicants" section 16 (1) of 1911, p. 43.

² Obviously the intention is that the Land Court shall be ready to give additional land where the landholders' holdings have been reduced by the action of the landlord, and slow to do so where the small size of the holdings is due to subdivisions upon the part of the landholders themselves.

³ See the *Glendale Crofters* case before the Commission, 1893, 1 S. L. T., at p. 194.

⁴ This term is misleading. The land is to be added to the landholders' holdings, and held on the same terms as these. See section 11, note 3,

section 15, and per the Lord President in *Traill's Trustees v. Grieve*, 1890, 17 R. 1115, at p. 1119.

⁵ The amount of which, in default of agreement, the Land Court may fix.

⁶ This provision is perplexing. Does "applied as aforesaid" simply mean "applied to the Land Court"? or does it refer to the particular kind of application specified in the preceding portion of the section? The latter seems to be the true construction; and if so, it appears that when landholders apply for more land from the landlord, the Land Court may admit them to a share in common pasturage occupied by other landholders, whether or not their application against the landlord is entertained. But apparently it is incompetent for landholders to make application simply for a share in common pasture rights enjoyed by other landholders. It is only when they bring a case against the landlord that the Land Court can interfere. The Crofters Commission took this view (*Nicholson v. M'Donald*, C. C. Report for 1893, Parl. Papers, 1894, c. 7300, p. 126).

⁷ This provision, which is quite out of its place in this section, is a corollary to judicial rent and fixity of tenure. These privileges would be nugatory if it were in the landlord's power to deny a supply of seaweed, thatching materials, and peats, all practically necessities of life to some landholders. The right to these materials is a matter to be taken into consideration by the Land Court in fixing a fair rent, and the right is not taken away by the sale by the landlord of that part of his estate over which the right is exercised (*MacDonald v. MacDougall*, 1896, 23 R. 941). When the Land Court have not dealt with the matter, the landlord is entitled to regulate it himself, and to direct the landholders where they are to resort to for these supplies (see *Purr v. MacLean*, 1889, 16 R. 810). As to penalties for breach of these regulations, see 1911, section 24 (3), p. 48.

13. Available Land.—[(1) Land shall not be deemed available land for the purposes of this Act, unless it lies contiguous or near to land already in the occupancy of the crofters making the application, and belongs to the same landlord or landlords as the land occupied by the said crofters :

(2) If the land is subject to an existing lease for a term of years, entered into prior to the commencement of this Act (not being a lease for the purposes of a deer forest, or of a grouse moor, or for other sporting purpose), it shall not be competent to assign any part thereof for the enlargement of the holdings of the crofters who have made the application, unless with the assent of the landlord or landlords and of the tenant or tenants of such land, and upon such terms as such landlord or landlords and tenant or tenants shall voluntarily agree to:]

- (3) It shall not be competent for the Land Court to assign land for the enlargement of the landholders' holdings—

[(a) If the land forms part of any garden, policy, park, plantation, or other wood; or

(b) If the land forms part of any farm, whether subject to a lease or not, unless the Crofters Commission are satisfied that the part proposed to be assigned for the enlargement of the crofters' holdings can be so assigned without material damage to the letting value of the remainder;

(c) If the land forms part of an existing farm or other holding, unless the rent or annual letting value of such farm or holding shall exceed one hundred pounds;

(d) If the land is arable or improved pasture in the immediate vicinity of a residence or farm-steading, or is land which could not be assigned for the enlargement of the crofters' holdings without substantially impairing the amenity of such residence or farm-steading;]

(e) If the land form part of a deer forest, and if the assignation of such land for the purposes of this Act would seriously impair the use of the remainder as a deer forest, and would act injuriously on the prosperity of the inhabitants generally of the district in which such deer forest is situated.¹

- [(4) The aggregate value of the land assigned for the enlargement of the crofters' holdings shall not exceed one-third of the rent or annual letting value of the farm or other holding from which it is taken, when the annual value of the holding is between one hundred pounds and one hundred and fifty pounds, or one-half when the annual value is above one hundred and fifty pounds and below three hundred pounds, or two-thirds when the annual value of the holding is above three hundred pounds.

- (5) It shall not be competent for the Crofters Commission to grant the application of the crofters for the enlargement of their holdings, to the extent or effect of raising the annual value of their holdings respectively to a higher amount than fifteen pounds each.]

¹ Deer, although they roam far, have generally headquarters of very limited range, where they breed, and in the neighbourhood of which most of the hinds are to be found. The incorporation of such a tract in landholders' holdings might destroy the value of the forest, and thereby divert wealth from the district.

14. *Deduction from Rent in Case of Lands held under Lease.*—Where a portion of any land held under lease [for the purposes of a deer forest or of a grouse moor, or for other sporting purpose], is assigned by the Land Court for the enlargement of the holding or holdings of a landholder or landholders under this Act, the Land Court shall, when they so assign such land, fix the amount of the deduction (if any) which in their judgment ought to be made from the rent payable by the tenant under the lease to the landlord, in respect of the portion of the land held under the same having been assigned as aforesaid, and thereafter the tenant under the lease shall be liable to the landlord only in the balance of the rent thereby stipulated after deduction of the sum so fixed.¹

¹ Notice of the dependence of the proceedings must be given to the tenant. Section 21.

15. *Assigned Land.*—Land assigned by the Land Court under the authority of the Landholders Act shall be deemed to be part of the holding or holdings to which it is so assigned, and shall be subject to the provisions of this Act relative to landholders' holdings.

16.¹ *Bequest of Holding.*—A landholder may, by will or other testamentary writing, bequeath his right to his holding to one person, being a member of the same family; that is to say, his wife or any person who, failing nearer heirs, would succeed to him in case of intestacy² (hereinafter called the "legatee"), subject to the following provisions:—

- (a) The legatee shall intimate the testamentary bequest to the landlord or his known agent within two months after the death of the landholder, unless he

is prevented by some unavoidable cause from making intimation within that time, and in that event he shall make intimation as soon as possible thereafter :

- (b) Intimation to the landlord or his known agent by the legatee shall import acceptance of the landholder's right to the holding by the legatee :
- (c) Within one month after intimation has been made to the landlord or his known agent, he may intimate to the legatee that he objects to receive him as landholder in the holding :

If the landlord or his known agent makes no such intimation within one month, the legatee shall come into the place of the landholder in the holding as from the date of the death of the deceased landholder.

- (d) If the landlord or his known agent intimates that he objects to receive the legatee as landholder in the holding, the legatee may present a petition to the Land Court, praying for decree declaring that he is the landholder therein as from the date of the death of the deceased landholder, of which petition due notice shall be given to the landlord, who may enter appearance and state his grounds of objection; and if any reasonable ground of objection is established to the satisfaction of the Land Court, it shall declare the bequest to be null and void; but otherwise it shall decern and declare in terms of the prayer of the petition :
- (e) The decision of the Land Court under such petition as aforesaid shall be final :³
- (f) Where the legatee shall have presented a petition to the Land Court as aforesaid, the legatee, pending any proceedings, shall have possession of the holding, unless the Land Court shall otherwise direct on cause shown :
- (g) If the legatee shall accept the bequest, and the bequest is not declared to be null and void as aforesaid, the legatee shall be entitled to possess the holding on the same terms and conditions as if he had been the nearest heir of the landholder :

- (h) If the legatee does not accept the bequest, or if the bequest is declared to be null and void as aforesaid, the right to the holding shall descend to the heir of the landholder, in the same manner as if the bequest had not been made:

Provided always, that in the case of any legatee, or heir-at-law, more distant than wife, son, grandson, brother, or son-in-law,⁴ it shall be competent to the landlord on his own part, or on the part of neighbouring landholders,⁵ to represent that, for the purpose of enlarging their holding or holdings, the holding ought to be added to them; and in all cases in which the Land Court shall determine in favour of such representation, the heir, or the legatee, as the case may be, who but for such determination would have succeeded to the holding, shall have right to any claim of compensation for improvements thereon which would have been competent to the deceased landholder if he had been removed at the date of his death: provided further, that if in any such case the landlord shall fail, within six months after the determination of the Land Court, to add the holding to one or more of the adjoining holdings, it shall be competent to the neighbouring landholders to apply to the Land Court, who shall make an order assigning the holding to one or more of the neighbouring landholders for the enlargement of his or their holding or holdings.

¹ This section corresponds to section 19 of the Agricultural Holdings (Scotland) Act, 1908. The only differences other than verbal are the following:—The power to take by bequest is not as here confined within the testator's family. Notice of bequest must be within twenty-one days, not two months as here. The Sheriff comes in place of the Land Court. The words "where . . . aforesaid," in subsection (f), do not occur in the Agricultural Holdings Act, nor is there in that Act any subsection corresponding to (g) in the present Act. The proviso from "provided always" to the end is also peculiar to the Crofters Act. The section was amended and put in its present form by section 20 of the 1911 Act, p. 20.

² *I.e.* succeed to him in heritage. These are descendants, brothers and sisters and their descendants, father, brothers and sisters of the father, and their descendants, and the same of the father's father, and so on, but not the mother or any of her relations (*Mackenzie v. Cameron*, 1894, 21 R. 427) or brothers or sisters uterine (see note 2 to section 6). The existence of nearer heirs does not prevent the landholder bequeathing his right to an heir more remote (*MacLean v. MacLean*, 1891, 18 R. 885).

³ The Land Court is final only upon questions of fact or discretion, and

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not upon any question as to the construction of the statute (see *Mackenzie v. Cameron*, *cit.* and 1911, section 25 (2), p. 50).

⁴ A son-in-law cannot take the lease either as heir or as legatee,—although his wife can in either capacity,—for he is not a member of the landholder's family as that term is defined in the opening and ruling clause of the section. But a sister, or a daughter, or a granddaughter, is not more distant than a brother, or a son, or a grandson, and therefore they must be held to be covered by the enumeration, although the blundering reference to son-in-law suggests a doubt with regard to the case of a granddaughter.

⁶ On his own estate.

VI. *Land Court.*

[17. *Appointment of Three Commissioners.*—With a view to the execution of this Act, it shall be lawful for Her Majesty to appoint three Commissioners, in this Act designated “the Crofters Commission.”

One of the said Commissioners shall be a person who can speak the Gaelic language.

One of the said Commissioners shall be a person who at the date of his appointment shall be an advocate of the Scottish Bar of not less than ten years' standing.

If any vacancy occurs in the office of Commissioner by death, resignation, incapacity, or otherwise, Her Majesty may, by warrant under the Royal Sign Manual, appoint some other qualified person to fill the vacancy.

It shall be the duty of the Crofters Commission to hold sittings in such places to which this Act applies, and in such order and subject to such regulations as the Secretary for Scotland may prescribe.

The Crofters Commission may appoint such officers, including valuers and assessors, as also clerks or persons holding inferior situations, at such remuneration as the Treasury may sanction, and the Commissioners shall receive such remuneration as the Treasury may sanction out of moneys to be provided by Parliament.]

18. *Land Court to make Report of their Proceedings.*—The Land Court shall once in every year, after the year one thousand eight hundred and eighty-six, make a report to the Secretary for Scotland as to their proceedings under the Landholders Acts, and every such report shall be presented to Parliament.

19. *Area Covered by the Act.*—[The Crofters Commission, after due inquiry, shall ascertain what parishes, or islands, or districts forming aggregates of parishes, within the counties of Argyle, Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney and Shetland, are crofting parishes, or aggregates of crofting parishes, and shall determine that this Act shall apply to such parishes.

Such determination shall be reported to the Secretary for Scotland in one or more reports, and may be confirmed by him with or without modification.

From and after the date of such confirmation, this Act shall apply to the parishes included in the determination.

Every such determination, when confirmed, shall be laid before Parliament.

Within the parishes to which this Act is determined to apply as aforesaid, this Act shall apply to every landholder [who is the tenant of a holding at the passing of this Act,] and to his heirs and legatees, in the same manner as if the tenancy were a lease.¹

In the event of the heirs-at-law of the landholder being heirs-portioners, the eldest of such heirs-portioners shall succeed to the tenancy without division.²

¹ In reality, the right of the landholder, although in some respects resembling that of a tenant under a lease, will be one *sui generis* (see p. 9).

² On failure of the eldest heir-portioner, the holding devolves upon her heir, and not upon the next heir-portioner (*Balfour v. Hutchison*, 1899, 7 S. L. T. 116).

20. *Procedure in Fixing Fair Rent.*—When an application is made to the Land Court to fix a fair rent, intimation thereof shall be given to the other party interested in the holding, landlord or landholder, as the case may be, and the Land Court shall appoint a time and place at which parties shall be heard in reference to the matter of the application.¹

It shall be competent for the Land Court, in case of such application, to visit the holding, if it thinks fit, as also to call in the aid of an assessor or assessors, specially qualified by local knowledge or otherwise, and to hear the case wholly or partially with the aid of such assessor or assessors, or they may obtain a

valuation or report from a competent valuer or valuers appointed by them for the purpose.

¹ See *Dalgleish v. Livingston*, 1895, 22 R. 646, as to whether decisions are binding against a person cognisant of the proceedings but not formally a party to them.

21. Procedure in Enlarging Holdings.—When an application¹ for an enlargement of landholders' holdings is made to the Land Court, it shall intimate such application to the landlord or landlords, as also to the tenant or tenants, and any other person or persons in the occupation of or otherwise interested in the land proposed to be added to the landholders' holdings, including heritable creditors² holding securities over the same, and shall give notice of the time or times, and place or places, at which parties will be heard in regard to the matter of the application.¹

It shall be competent to the Land Court to visit the place to which the application¹ relates, and also, if it shall think fit, to call in the assistance of an assessor or assessors, or of a valuer or valuers, as hereinbefore provided.³

In assigning land for the enlargement of landholders' holdings, it shall be competent for the Land Court, if it think fit, to make such order or orders with respect to the erection and maintenance of fencing of the said land as they shall consider necessary or expedient, and to decern that the expense of such erection and maintenance shall be paid by the person or persons interested, as the Land Court shall consider just, having regard to the advantage accruing to the said person or persons respectively from such fencing.

It shall also be competent to the Land Court to decide summarily any questions relating to the boundaries or marches between landholders' holdings, including grazings, or between landholders' holdings, including grazings and adjoining lands.⁴

In the event of any dispute arising as to whether a person is a "landholder" within the meaning of the Landholders Acts, it shall be competent for the Land Court to determine such question summarily.⁵

¹ As to the term "application" in this section, see section 16 (1) of 1911, p. 43.

² The Land Court will be dependent upon the landlord for information in regard to the heritable creditors.

³ Section 20.

⁴ On the same estate ; it cannot have been intended that the Land Court was to settle boundary disputes between properties.

⁵ This provision has given rise to much discussion. It was doubted whether it was meant to be of general application, or was limited to cases arising under this section. Either view was difficult. It was hard to understand why, if the provision was meant to be of general application, it was tacked on in this incidental way to a section dealing with a very special matter. On the other hand, if the provision was not of general application, it was not easy to understand why it was deemed necessary to make a special provision of the kind in regard to this one branch of the work of the Land Court. The decisions, however, deprived the question of practical importance. It was found that, whilst with reference to the exercise of any of its powers, whether under this section or otherwise, the Crofters Commission might determine whether a person was a crofter, and might do so summarily, such determination was merely explicatory of its jurisdiction, and was not final ; and that it was incompetent for the Commission to entertain an application of a purely declaratory character (see authorities cited in note 1 to section 25, *infra*).

[22. *Duration of Powers as to Enlargement of Holdings.*—The powers of the Crofters Commission with respect to the enlargement of crofters' holdings shall continue for a period of five years from the passing of this Act.]

[23. *Delegation of Land Court's Duties.*—In executing the provisions of this Act, it shall be competent for the Crofters Commission to delegate the duties thereby prescribed to two of their number ; but any determination arrived at by such two Commissioners shall be subject to review, upon appeal, by the whole three Commissioners.]

24. *Taking Evidence [and Expenses] before Land Court.*—In any application under the Landholders Acts, it shall be competent to any of the parties thereto to demand, and for the Land Court to order, that the evidence shall be taken upon oath ; [and it shall also be competent to the Crofters Commission to make such order as to expenses as they think fit.]

25. *Finality of Land Court's Decision.*—The decision of the Land Court in regard to any of the matters committed to their determination by this Act shall be final.¹

¹ This provision, which may be compared with 25 (2) of 1911, had, as interpreted by decision, a comparatively narrow scope. The Crofters

Commission were final only upon administrative or discretionary matters committed by the Act specially to them, as, for example, what is the fair rent for a holding? or whether it is expedient to enlarge certain holdings. They had no jurisdiction to determine questions of law arising upon the construction of the statute, except in so far as such determination might be necessary in order to enable them to explicate their own jurisdiction, and any determination so given was provisional merely, and might be set aside by a Court of law (*Sitwell v. M'Leod*, 1899, 1 F. 950. See also *Traill's Trustees v. Grieve*, 1890, 17 R. 1115; *Dalgleish v. Livingston*, 1895, 22 R. 646; *Stuart & Stuart v. M'Leod*, 1891, 19 R. 223; *Breadalbane v. Orr*, 1896, 4 S. L. T. 118; *Balfour v. Hutchison*, 1899, 7 S. L. T. 116). An application to the Commission to determine a question of legal right upon which the Commission were not invited to take any administrative action, was incompetent (per Lord President in *Sitwell v. M'Leod*). The Act of 1911 alters the situation somewhat as regards these matters, for it provides for the statement by the Land Court of a special case upon a question of law to a Division of the Court of Session (section 25 (2) of the 1911 Act).

26. Use of Sheriff Court-Houses.—The Land Court may use, free of charge, for holding its sittings, the court-houses commonly used as Sheriff Courts, when the same are not required by the Sheriffs, and the officers of such courts shall be bound to attend the sittings of the Land Court, and perform similar duties to those which they are required to perform on the occasion of sittings of the Sheriff Court, with right to exact the same fees as are exigible by them for service at the sittings of the Sheriff Court.

27. Record of Proceedings; Transmission of Applications by Sheriff-Clerk; Sheriff-Clerk's Remuneration.—There shall be kept in the Sheriff-Clerk's office of the county to which, or to any part of which, this Act applies, a book to be called the "Landholders Holdings Book." In this book the Sheriff-Clerk shall record every order of the Land Court, with the application on which it proceeds, and any other proceeding in the case which the Land Court may think necessary to be recorded. It shall be the duty of the Land Court to send such orders and applications to the Sheriff-Clerk to be recorded.

In any county to which this Act applies, which is divided into districts for judicial purposes, the "Landholders Holdings Book," applicable to the holdings within any district in which there is a resident Sheriff-Clerk or Sheriff-Clerk-Depute having

an office, shall be kept by the Sheriff-Clerk or Sheriff-Clerk-Depute resident within the district.

Every application shall be addressed to the Land Court at the Sheriff-Clerk's office, and it shall be the duty of the Sheriff-Clerk to transmit the same to the Land Court, according to such regulations as the Secretary for Scotland may prescribe.

The Sheriff-Clerks shall receive such remuneration as the Treasury may sanction out of moneys to be provided by Parliament.

[28. *Execution of Orders made by Commission.*—Any order of the Crofters Commission, or two of their number acting as hereinbefore provided, may be presented to the Sheriff, and the Sheriff, if satisfied that the order has been made in conformity with the provisions of this Act, and has been duly recorded, may pronounce decree in conformity with such order, on which execution and diligence shall proceed.]

29. *Forms of Procedure.*—The Land Court may, subject to the approval of the Secretary for Scotland, frame and issue such printed forms of application and other forms of procedure as they shall think proper.

It shall be in the power of the Land Court to make rules with reference to proceedings before the Court, and also, with the approval of the Treasury, to fix a scale of costs and fees to be charged in carrying the Landholders Acts into execution, and the taxation of such costs and fees, and the persons by whom, and the manner in which, such costs and fees are to be paid.

30. *Sole Arbiter may be Chosen.*—Where, in any proceeding under the Landholders Acts, the Land Court is empowered to pronounce an order, the landlord and the landholder may agree to accept the decision of a sole arbiter mutually chosen, instead of the decision of the Land Court;¹ and in that case any order pronounced by such sole arbiter shall, when recorded in the "Landholders Holdings Book," along with the agreement to accept his decision, be as effectual to all intents and purposes as an order of the Land Court; and all regulations applicable to

the Land Court, and to the orders pronounced by them, shall apply to any sole arbiter and the orders pronounced by him.

¹ The agreement must be formally executed, and must state explicitly that the parties agree to take the decision of the arbiter in place of that of the Land Court.

31. *Saving of 46 & 47 Vict. c. 26.*—Nothing¹ in the Landholders Acts shall affect the provisions of the Agricultural Holdings (Scotland) Act, 1883,² provided that—

Where any improvements are valued under the said Act, with a view to compensation to be paid to a landholder, such valuation shall be made, unless the landlord and the landholder otherwise agree, by the Land Court, according to the procedure prescribed by the Landholders Acts.³

¹ In so far as not inconsistent with the express terms thereof.

² Now repealed and superseded by the 1908 Act, p. 188.

³ No special procedure is provided by these Acts for the valuation of improvements.

32. *Loans for the Purchase and Equipment of Fishing Boats.*¹
—For the purpose of enabling the Fishery Board for Scotland, established under the Fishery Board (Scotland) Act, 1882, to make advances by way of loan to persons engaged in the prosecution of the fishing industry, whether landholders or others in crofting parishes [in all or any of the counties to which this Act applies, and] abutting upon the sea, it shall be lawful for the Treasury to advance to the Fishery Board such sums as may from time to time be placed at their disposal by Parliament for the purpose.

The purposes to which the sums advanced as aforesaid shall be applied by way of loan, shall be deemed to include the building, purchase, or repair of vessels, boats, and gear for fishing purposes, and any other purpose of the like nature, for the benefit or encouragement of the fishing industry within the localities above specified, which may be sanctioned by the Fishery Board, with consent of the Secretary for Scotland.

The loans in making which the said sums shall be applied, shall be made by the Fishery Board upon such terms as to repayment, security, rate, and payment of interest, and other-

wise, as the Secretary for Scotland, with the consent of the Treasury, shall determine.

All moneys due in respect of loans made under this Act may be recovered by the Fishery Board summarily, in manner provided by the Summary Jurisdiction Acts (27 & 28 Vict. c. 53; 44 & 45 Vict. c. 33); and the secretary of the Board for the time being shall have power to sue for and recover such moneys in name of the Board.

A certificate, purporting to be signed by the chairman and secretary of the Fishery Board, stating the amount due from any person in respect of any loan made to him under this Act, together with the interest thereon, shall, until the contrary is proved, be evidence of the amount due and of the liability of the person therein named to pay the same.

If at any time, while any part of a loan under this Act remains unpaid, the Fishery Board are satisfied that the borrower is not carrying into effect the undertaking for which the loan was made, they may forthwith sue for and recover summarily the loan and all moneys due by him in respect thereof.

All moneys recovered by the Fishery Board in repayment of such loans, and interest thereon, shall be paid by the Fishery Board to the account of Her Majesty's Exchequer, as the Treasury may from time to time direct.

The Fishery Board shall, in the annual report to be made by them to the Secretary for Scotland, in terms of the Fishery Board (Scotland) Act, 1882 (45 & 46 Vict. c. 78), and the Secretary for Scotland Act, 1885 (48 & 49 Vict. c. 61), give an account of their intromissions under this Act during the preceding year.

¹ Under the Sea Fishings Boat (Scotland) Act, 1886 (49 & 50 Vict. c. 45), provision was made for the registration and mortgage of fishing boats, so that they might be a valid security for loans, and under the authority of that Act an Order in Council was issued for carrying out its provisions. By the Public Works Loans Act, 1887, a grant of £30,000 was made to the Fishery Board for Scotland for the purpose of making these advances, and this sum was from time to time advanced. It was at first arranged that the maximum advance should be three-fourths of the price for a new boat, and two-thirds to repair or purchase a boat already built, or to buy fishing gear; but these terms were found to be prohibitory in so many cases that

a relaxation was made, and the amounts were raised to nine-tenths and eight-tenths respectively. Fresh loans were not made when instalments of the money came back, as the experiment was not deemed successful, and the proportion of the total advances which was recovered was unsatisfactory and discouraging. The boats on which advances had been made were generally found to be too small to suit the greatly developed requirements of the fishing industry. The whole story is a warning.

33. *Saving in Case of Holdings in Possession of Servants.*—Nothing in the Landholders Acts shall apply to any holding or building let to a person during his continuance in any office appointment, or employment of the landlord, or of any tenant of the landlord,¹ nor to any holding or building let at a nominal rent, or without rent, as a pension for former service, or on account of old age or poverty,² nor to any holding or building let to a person during his tenure of any office, such as that of minister of religion or schoolmaster, or³ to any innkeeper or tradesman placed in the district by the landlord for the benefit of the neighbourhood.

¹ This does not exclude a tenant who does only occasional labouring work for his landlord at days' wages or on contract, and who is free to work for other people (*Keith v. Mackay*, 1887 Report of C. C., Parl. Papers, 1888, c. 5247, p. 103. See also *Macinnes'* 1904 Report, 1905, c. 2457, p. 96). Nor does it apply to the case of a servant of a landholder to the effect of avoiding the irritancy incurred by subdivision under section 1 (4) and section 3 (*Abinger v. Caneron*, 1888, 15 R. 598). But it excludes a ferryman (*Breadalbane v. Orr*, 1896, 4 S. L. T. 118). The Commissioners held that the Act did not apply to the tenants of glebe lands (*Nelson v. Kidd*, 1892, Report Parl. Papers, 1893, 6964, p. 150). By section 26 (3) (e) of the 1911 Act glebes are expressly excluded as regards the holdings brought into the system by that Act.

² "Holding or building let without rent on account of poverty," comes very near the definition of one class of cottars, in section 34.

³ "Nor" was in the Act. Section 26 (7) of the 1911 Act substitutes "or."

34. *Definitions.*—In the Landholders Acts ["crofter" means any person who, at the passing of this Act, is tenant of a holding from year to year, who resides on his holding, the annual rent of which does not exceed thirty pounds in money, and which is situated in a crofting parish, and the successors of such person in the holding, being his heirs or legatees.

"Crofting parish" means a parish in which there are at the

commencement of this Act, or have been within eighty years prior thereto, holdings consisting of arable land held with a right of pasturage in common with others, and in which there still are tenants of holdings from year to year, who reside on their holdings, the annual rent of which respectively does not exceed thirty pounds in money, at the commencement of this Act].

“Cottar” means the occupier of a dwelling-house situate in a crofting parish,¹ with or without land, who pays no rent to the landlord, as also the tenant from year to year of a dwelling-house, situated in a crofting parish, who resides therein, and who pays to the landlord therefor an annual rent not exceeding six pounds in money, whether with or without garden ground, but without arable or pasture land.²

“Permanent improvements” means the improvements specified in the Schedule to this Act.

[“Holding” means any piece of land held by a crofter, consisting of arable or pasture land or of land partly arable and partly pasture, and which has been occupied and used as arable or pasture land (whether such pasture land is held by the crofter alone, or in common with others) immediately preceding the passing of this Act, including the site of his dwelling-house and any offices or other conveniences connected therewith, but does not include garden ground only, appurtenant to a house.]

“Treasury” means the Commissioners of Her Majesty’s Treasury.

Other expressions have the same meanings as in the Agricultural Holdings (Scotland) Act, 1883³ (46 & 47 Vict. c. 62).

¹ See section 31 of Act of 1911.

² It appears that a person may qualify for the privileges of a cottar who comes into occupation of land or a house subsequent to the passing of the Act.

³ Now repealed by the Act of 1908. See p. 173 for definitions.

35. Short Title.—This Act may be cited as the Crofters’ Holdings (Scotland) Act, 1886.

SCHEDULE.

Permanent Improvements.

1. Dwelling-house.¹
2. Farm offices.¹
3. Subsoil or other drains.
4. Walls and fences.¹
5. Deep trenching.²
6. Clearing the ground.²
7. Planting trees.²
8. Making piers or landing-stages.^{1 2}
9. Roads practicable for carriages from the holding or holdings to the public road or the seashore.
10. All other improvements which, in the judgment of the Land Court, shall add to the value of the holding to an incoming tenant.²

¹ The erection of a dwelling-house, farm offices, walls and fences, or piers or landing-stages, in place of others which have fallen to pieces through natural decay, and without neglect on the part of the landholder, is, it is thought, an improvement entitling the landholder to compensation.

² Not mentioned in Schedule to Agricultural Holdings (Scotland) Act, 1908.

III.

THE CROFTERS' HOLDINGS (SCOTLAND) ACT, 1887.

[50 & 51 VICT. CHAP. 24.]

An Act to amend the Crofters' Holdings (Scotland) Act, 1886.

[8th August 1887.]

1. *Short Title and Construction.*—This Act may be cited as the Crofters' Holdings (Scotland) Act, 1887 (49 & 50 Vict. c. 29), and shall be read as part of the Crofters' Holdings (Scotland) Act, 1886, hereinafter called the principal Act.

2. *Stay of Proceedings for Sale of Landholder's Effects.*—Any landholder who has made or shall make an application¹ to the Land Court to fix a fair rent for his holding, and against whom legal proceedings have been taken for payment of rent, may apply under the same or any subsequent application to the Land Court for an order prohibiting the sale of the landholder's effects² upon the said holding by virtue of any decree for payment of such rent; and the Land Court, if satisfied that such sale would have the effect of defeating, in the case of such landholder, the intention of the Landholders Acts,³ may, upon such terms as to payment of rent or otherwise as it shall think fit, grant an order prohibiting such sale till the application to fix a fair rent has been finally determined.⁴

Any application under this section shall be made [within the following periods: (1) In the case of proceedings in dependence at the passing of this Act, within two months of the date hereof; (2) in the case of proceedings instituted after the passing of this Act,] at any time before the expiration of the *induciae* in the action.⁵

The Land Court shall consider and determine applications under this section summarily [and they may ascertain the facts by means of affidavits or by such inquiry as they may deem appropriate in each case]. The powers conferred by this Act are in addition to those contained in subsection four of section six of the principal Act,⁶ and where any landholder has, subsequent to the Crofters' Holdings (Scotland) Act, 1886, or the *Small Landholders (Scotland) Act*, 1911, as the case may be,⁷ coming into operation, granted a bill or promissory note at the request of his landlord for arrears of rent, the Land Court shall not be precluded from dealing with such arrears under the said Act;⁸ and where any landholders shall have been called on to pay and shall have paid to the holder of such bill or note any larger sum than the Land Court shall hold ought to be paid of such arrears, it may give relief by ordering repayment of such excess by the landlord, or authorise the deduction thereof from future rents in such instalments as it may fix.⁹

¹ It is thought that, on a reasonable construction of this section, the landholder will not be debarred from this privilege by reason of the fact that the application was made by the landlord.

² By section 6 (4) of the Act of 1886, power was given to the Commission to sist all proceedings for removal of the crofter in respect of non-payment of rent till the application was finally determined, but this protection might have been rendered nugatory if it was in the power of the landlord to roup the crofter up and dispenish the holding; hence this provision.

³ Namely, that the landholder should have relief against arrears, which, through no fault of his own, he was unable to meet.

⁴ Such an order is no bar to a Court of law pronouncing decree for the arrears. The order is ineffectual if it appears to that Court that the holding is not one to which the Act applies (*Stuart & Stuart v. M'Leod*, 1891, 19 R. 223).

⁵ If the *inducia* be allowed to expire the Land Court has no jurisdiction to interfere with the course of law.

⁶ The power, namely, to sist proceedings for removal.

⁷ See section 31 (4) of 1911 Act, p. 58.

⁸ In some cases landlords who could get no rent out of their tenants were content to take bills. It was thought that the bill might operate as novation, and that the Commission might have no jurisdiction to interfere with a debt so constituted under its power of dealing with arrears. This provision resolves the doubt in favour of the landholder.

⁹ The question of novation might have been deemed to be attended with difficulty when the landlord held the bill, but there could be no

doubt that the tenant could not take advantage of any provision of the Crofters Act against any third *bonâ fide* holder to whom the landlord might have endorsed over the bill. Any interference with this would have been a most inconvenient disturbance of the security and finality of bills of exchange. Accordingly, this section, whilst leaving the holder of the bill his full remedy, empowers the Land Court to give the tenant relief against the landlord for any over-payments to the holder of the bill.

3. *As to Notour Bankruptcy of Landholder.*—Any landholder, in whose favour an order¹ has been granted under the immediately preceding section, shall not, for the purposes of section 1 of the principal Act, be held to become notour bankrupt² by reason of any decree obtained or diligence done before or during the subsistence of such order, and³ for the rent to which such order relates: provided always that this section shall not, after the decision of the Land Court on the arrears due by such landholders, continue to apply to such decrees or diligence as shall not be invalidated by such decision.

¹ That is, an order prohibiting the sale of the landholder's effects till the application to fix a fair rent has been finally determined.

² Under section 1 (6) of the 1886 Act, notour bankruptcy is a breach of a statutory condition; and, under section 3, the landholder guilty of such a breach may be summarily removed. The object of this section, therefore, was to protect the crofter against forfeiture of his holding through his incurring a statutory irritancy before the Commission had adjudicated upon his case.

³ "And," not "or," and accordingly there is nothing to prevent the landholder being made notour bankrupt for any other debt.

4. *Amendment of Section 6 of 49 & 50 Vict. c. 29.*—Section six, subsection three, of the principal Act shall be read and construed as if the words "the first term of Whitsunday or Martinmas next following" were inserted between the words "and" and "the" in the said subsection.

IV.

CROFTERS' COMMON GRAZINGS REGULATION ACT, 1891.

[54 & 55 VICT. CHAP. 41.]

An Act to regulate Crofters' Common Grazings in Scotland.

[27th July 1891.]

1. *Short Title and Construction.*—This Act may be cited as the Crofters' Common Grazings Regulation Act, 1891, and shall be read as part of the Crofters' Holdings (Scotland) Act, 1886, herein-after called the principal Act.¹

¹ The provisions of this Act are supplemented by the 1908 Act, p. 106, and by section 24 of the 1911 Act, p. 47.

2. *Appointment of Committee.*—The landholders [in any township or townships situated in a crofting parish or parishes within the meaning of the principal Act] who share in the same common grazing, may, at a public meeting called by public notice, appoint a committee¹ of such number as the meeting shall think fit [not being less than three or more than five], who shall be charged with the duty (in so far as such matters are not regulated by conditions binding in terms of section one, subsection five, of the principal Act) of making regulations as to the number of stock which each landholder shall be entitled to put on the common grazing, and as to any other matters affecting the fair exercise of their joint rights therein by the several landholders.²

The notice of meeting may be given by any two landholders interested in the common grazing or other right, and the notice shall be given by being published for two successive weeks in

any newspaper circulating in the parish, or by being posted for two successive weeks at or near the door of every place of worship and every public school in the district³ affected.

In the event of any dispute arising as to the sufficiency of any such notice, such dispute shall be decided summarily by the Land Court, and its decision shall be final.⁴

The regulations so made shall be submitted to the Land Court, who shall cause reasonable notice to be given to the landlord of the said common grazing;⁵ and shall hear the parties, if this be desired by any party, and make such inquiry as it may deem necessary: and it shall, in considering the said regulations, have regard to any existing custom [of the township] in the matters affected, whether founded on the estate rules or otherwise; and it may approve of the proposed regulations with or without alteration, or it may refuse to approve of the same; and, when so approved, such regulations shall come into force and may be added to or altered by the committee from time to time with the like approval.⁶

¹ Of their own number.

² It may happen that persons who are not landholders within the meaning of the Act have a share in the common grazings. Such persons could only be brought within the scheme provided by this Act of mutual consent. Otherwise the duty of the committee and the regulations had to be confined to the arrangement of the rights of the crofters *inter se* alone. This was altered by 1911, section 24 (2), p. 47.

³ District is here used in a general sense. The notice might be quite good although the churches and schools were not within the township lands.

⁴ The Act makes no express provision as to the settlement of any dispute as to the regularity of the effect of the proceedings at the meeting, but on the principle explained in the case of *M'Dougall v. M'Alister*, 1890, 17 R. 555, these matters would probably fall to be determined by the Land Court.

⁵ Intimation should also, it is thought, be given to any other non-landholders having rights in the grazings.

⁶ This Act made no provision for the framing of regulations in case the Crofters' Commission refused altogether to approve of the regulations submitted by the committee, or in case the committee failed to prepare regulations. In the case dealt with in section 4, where the committee is appointed by the Land Court and fails to prepare regulations, the Land Court is empowered to prepare them. A general power to frame regulations is given to the Land Court by section 24 of 1911, p. 47.

3. *Casual Vacancies.*—Such committee shall remain in office for three years, and at the end of every such period a new committee shall be appointed at a public meeting, and after public notice as aforesaid. Outgoing members shall be eligible for re-election. Vacancies occurring by death or resignation shall be filled up by nomination of the remaining members. A majority shall be a quorum. The said committee shall appoint one of their number to act as clerk or constable.

4. *On Failure of Landholders to Appoint Committee, Land Court may do so.*—In case the landholders interested in any common grazing shall at any time fail to appoint a committee, the Land Court may, [on the request in writing of any two landholders interested, or the landlord or landlords, and] after making such inquiry, if any, as the Land Court may deem necessary, appoint a committee who shall have the same duties and powers, and remain in office for the same period, as if they had been appointed by the landholders ; and in the event of such committee failing to make regulations within three months after their appointment, the Land Court may make such regulations itself, [on the request in writing of any two landholders or of the landlord].

5. *Petition to Sheriff in Case of Breach of Regulations.*—The committee shall see to the due observance of the regulations, and in case of any breach or non-observance thereof, they or any two landholders interested, or the landlord, may make application to the Sheriff by petition, and the Sheriff may, upon such application, make such order or orders for the enforcement of the said regulations, by granting warrant for the sale of surplus stock and disposal of the proceeds by causing the same to be paid to the owner of such stock under deduction of expenses, or by imposition of penalties, or otherwise as he shall think fit.¹ And he shall have power to award expenses, and such expenses as the committee may duly incur and not recover shall be paid by the landholders proportionately to the amount of their rents, conform to a decree which may be granted by the Sheriff on the application of such committee.²

¹ The powers of the Sheriff under this section are very wide ; indeed, it is remarkable to find a power of imposing “penalties” without any

specification or limitation entrusted to the Judge Ordinary. Specific penalties are provided by the Act of 1908, *infra*, and by section 24 (3) of 1911, p. 48. It is thought that it will be most convenient that the application to the Sheriff should be, *primo*, for an order to remove surplus stock, and, *secundo*, and on failure, for an order for sale. Indeed, where the application is by the landlord, or by individual landholders, it will probably be preferable to apply simply for an order to remove the stock. The landholders can be charged on such an order and proceeded against *in personam* if they fail to obey, whereas the execution of a warrant for sale at the instance of one or more individuals, of other people's stock, is, as has been found, difficult of execution, and not unlikely to lead to a breach of the peace.

² A separate application for the purpose appears to be necessary.

6. Recording and Enforcement of Regulations.—Regulations made in terms of this Act, when approved by the Land Court, and any alterations on such regulations when so approved, shall be an order of the Land Court within the meaning of the principal Act, and the provisions of the said principal Act with respect to the recording and enforcement of orders,¹ and all other procedure, shall apply to regulations made under this Act.

¹ See section 27 of 1886, p. 92. The provisions of these sections as regards execution and diligence appear inapplicable, or at least unworkable, in relation to regulations which are not in the form of direct and specific orders upon individuals. For the enforcement of Regulations recourse must be had to the provisions of section 5; but before section 5 is resorted to, the Regulations should be recorded in terms of section 27 of 1886, and it will also be well to have the Sheriff's authority interponed to them in terms of section 25 (6) of 1911, p. 51.

7. Signed Conditions to be Equivalent to Regulations.—Where all the landholders interested in a common grazing shall have signed a condition or conditions regulating the use of the same, and the Land Court shall have found or shall find such condition or conditions to be reasonable, as provided by section one, subsection five, of the said principal Act, such condition or conditions may be recorded and enforced in like manner as if they were regulations made in terms of this Act and approved of by the Land Court.

V.

CROFTERS' COMMON GRAZINGS REGULATION ACT, 1908.

[8 EDW. VII. CHAP. 50.]

*An Act to extend the Powers of the Land Court in regard to the
Regulation of Common Grazings.*

[21st December 1908.]

1. *Short Title and Construction.*—This Act may be cited as the Crofters' Common Grazings Regulation Act, 1908, and shall be read as part of the Crofters' Holdings (Scotland) Act, 1886 (49 & 50 Vict. c. 29).

2. *Amendment of Crofters' Common Grazings Regulation Act, 1891.*—The power to appoint a committee and to make regulations conferred by section four of the Crofters' Common Grazings Regulation Act, 1891 (54 & 55 Vict. c. 41), may be exercised by the Land Court, if they think fit, without any request from a landlord or landholders interested,¹ and without prejudice to the powers conferred by section five of the said Act any person committing a breach of any regulations made and approved under the said Act, shall be liable on conviction before the Sheriff under the Summary Jurisdiction Acts to a penalty not exceeding forty shillings, and in the case of a continuing offence to a further penalty not exceeding five shillings for each day during which such offence shall have been continued after written warning from the committee or from the Land Court, and any such penalty shall be recoverable by imprisonment in terms of the Summary Jurisdiction Acts.² A person appointed by the Land Court may summon and attend any meeting of a committee under the said Act for the purpose of advising such

committee in the performance of their duties, and may otherwise assist in the administration of the said Act as may be directed by the Land Court.

¹ The primary objects of this Act were to authorise the Crofters Commission to take the initiative. In view of the amendment of 1891, section 4, by the repeal in the schedule hereto, the provision is now a mere redundancy. As a wife will often stand a good deal more from her husband than she ought to rather than call in the police, so crofters will sometimes bear too much from grasping neighbours rather than incur the odium of calling in outside interference.

² Penalties were authorised but not specified in the 1891 Act, section 5. Compare 1911, section 24 (3), p. 48.

3. *Repeal.*—The Crofters' Common Grazings Regulation Act, 1891, is hereby repealed to the extent mentioned in the third column of the schedule to this Act.

SCHEDULE.

(Section 3.)

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
54 & 55 Vict. c. 41.	Crofters' Common Grazings Regula- tion Act, 1891.	In section four, the words, "on the request in writing of any two crofters interested, or the landlord or landlords and"; and the words "on the request in writing of any two crofters or of the landlord."

VI.

CONGESTED DISTRICTS (SCOTLAND) ACT, 1897.¹

[60 & 61 VICT. CHAP. 53.]

*An Act to provide for the Administration of Sums Available
for the Improvement of Congested Districts in the Highlands
and Islands of Scotland.* [6th August 1897.]

[1. *Appointment of Congested Districts (Scotland) Commissioners.*—For the purpose of administering the sums available for the improvement of congested districts in the Highlands and Islands of Scotland, the following persons shall be Commissioners (called the Congested Districts (Scotland) Commissioners), that is to say :—The Secretary for Scotland, the Under-Secretary for Scotland, the Chairman of the Local Government Board for Scotland, the Chairman of the Fishery Board for Scotland, the Chairman of the Crofters Commission, and such other persons, not exceeding three, as the Secretary for Scotland may from time to time nominate.

The Secretary for Scotland may from time to time make, alter, and vary such rules as he shall deem necessary for regulating the proceedings of the Commissioners, and the times and places of their meetings.

2. *Secretary and Officers to be Appointed from Existing Officers of Government Departments.*—(1) The Secretary for Scotland may appoint as Secretary to the Commissioners one of the officers in the department of the Secretary for Scotland, or

¹ This Act is not strictly one of the Small Landholders (Scotland) Acts. See sections 31 and 36 of 1911 Act.

in any Government department in Scotland, and, with the consent of the Treasury, may assign to him an additional salary. The Secretary for Scotland may also, with the consent of the Treasury, direct any of the officers in any Government department in Scotland to discharge in relation to the Commissioners such duties, not inconsistent with those of their permanent offices, as he may think proper.

(2) The salaries or remuneration of the officers (if any) employed by the Commissioners, and the administrative expenses of the Commissioners, shall be fixed by the Treasury and paid out of the sums by this Act to be annually voted by Parliament.]

3. *Constitution of Congested Districts (Scotland) Fund ; Sums to be Carried thereto.*—For the purposes of this Act a fund (to be called the Congested Districts (Scotland) Fund)¹ shall be constituted, to which shall, from time to time, be carried:—

- [(1) the sum of fifteen thousand pounds annually available for the improvement of congested districts in the Highlands and Islands of Scotland under and during the continuance of the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896² (59 & 60 Vict. c. 37); and
- (2) any sums not exceeding twenty thousand pounds annually voted by Parliament for the said purpose and during the said continuance; and]
- (3) any moneys received for payment of interest or repayment of principal of any loan made by the Board under the provisions of this Act; and
- (4) any other sums applicable to the purposes of this Act.

¹ Under section 5 of 1911 this fund is merged in the Agriculture (Scotland) Fund. No particular amount is ear-marked for Congested Districts, which at present get £35,000 per annum.

² Section 4 of this Act provides that out of the sums paid by the Commissioners of Inland Revenue to the Local Taxation (Scotland) Account there shall be annually transferred “to an authority to be hereafter determined by Act of Parliament the sum of £15,000 [for the improvement of congested districts in the Highlands and Islands of Scotland], such sum to be applied as may be provided in the said Act.” The words in brackets are repealed by section 31 of the 1911 Act. It was also provided by the

1896 Act (section 6) that "in the case of any holding in a crofting parish the Crofters Commission (now Land Court) in fixing a fair rent for such holding shall not be entitled to take into account the relief effected by the Act from a proportion of the consolidated rate, poor rate, and other rates before mentioned." This refers to the provision in the 1896 Act, under which the occupier of agricultural land is rated upon only three-eighths of his valuation. The text of this Act will be found in the Appendix, p. 214.

4. *Application of Moneys at Disposal of Board.*—(1) In applying the Congested Districts (Scotland) Fund¹ the Board of Agriculture for Scotland may take such steps as they think proper for²—

- (a) aiding and developing agriculture, dairy farming, and the breeding of live stock and poultry in congested districts; and
- (b) providing suitable seed potatoes and seed oats and implements and dairy utensils and machinery or appliances for the making of butter or cheese for landholders and cottars in congested districts; and
- (c) providing, subject to the provisions herein-after contained, land for subdivision among or for enlargement of the holdings of landholders and cottars in congested districts for the purposes of cultivation or grazing, in such manner and upon such conditions and after such adaptations as shall be determined by the Board; and
- (d) aiding migration of landholders and cottars [from congested districts to other districts in Scotland,] and settling any migrants under favourable circumstances in the places to which they first migrate; and
- (e) aiding and developing fishing (including industries connected with and subservient to fishing) and the erection and formation of fishermen's dwellings and holdings in congested districts; and
- (f) aiding the providing or improving of [lighthouses,] piers or boat-slips, public roads and bridges, and foot-paths and foot-bridges, and meal-mills, in congested districts; and providing guarantees for telegraph extensions, or such other postal facilities (including money order and savings bank business) as may be

within the power of the Postmaster-General to grant under guarantee; and

(g) aiding and developing spinning, weaving, and other home industries in congested districts; and

(h) subject to the consent of the Treasury,—
aiding the providing or improving of harbours.

(2) The Board may give their assistance either by way of gift or loan, or by way of sale at cost price, and subject to such conditions as they think fit, which conditions and the provisions for their enforcement or for the case of their violation shall be as effectual as if they were contained in this Act, and the consent of the Secretary for Scotland shall be necessary before any grant of money is given by way of gift under the provisions of this Act.

(3) Any person nominated by the Board may, at all reasonable times, and after due notice to the occupier, enter any land occupied by an occupier to whom seed or implements, utensils, machinery, or appliances have been sold or gifted, in order to ascertain whether such seed has been properly sown, or that a proper use is being made of such implements, utensils, machinery, or appliances.

¹ See note 1 to section 3, *supra*.

² The powers under this section are somewhat wider than under the 1911 Act and the purposes more eleemosynary. It should be noted that money can be used under this section only in congested districts, except perhaps under (d) and (h). The latter part of (f) seems doubtful.

5. Acquisition, Adaptation, and Disposal of Land.—(1) For the purpose of the purchase of land by the Board (who are hereby authorised to purchase and hold land and dispose thereof as in this Act provided) the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement; and the provisions of subsection four of section three of the Allotments (Scotland) Act, 1892 (55 & 56 Vict. c. 54), with respect to the settlement of disputed compensation for land, shall apply, with the necessary modifications, as if the Board were therein referred to.

(2) Any limited owner may sell land to the Board for the

purposes of this Act at such a price, or for such consideration, as, having regard to those purposes and to all the circumstances of the case, is deemed reasonable; a limited owner may also, with the sanction of the Local Government Board given under this section, convey the land for that purpose either without payment of any purchase money or compensation, or at a price less than the real value, and may so convey it free of all incumbrances. Provided that the Local Government Board shall not give their sanction under this section unless they are satisfied that the purpose for which the land is conveyed is such as is calculated to benefit the remaining land held by the same title or other land of the same landowner, and provided also that, if the land proposed to be conveyed is subject to incumbrances, the Local Government Board before giving their sanction under this section shall cause notice to be given to the incumbrancers, and shall consider the objections, if any, raised by them.

(3) The Board may, if they think fit, before disposing of land for the purposes of this Act, adapt the same by dividing and fencing it, making occupation roads, and executing any other works, such as works for the provision of drainage or water supply, which can, in the opinion of the Board, be more economically and efficiently executed for the land as a whole.

(4) The Board may also, if they think fit, adapt the land for the purposes of this Act by erecting or assisting in erecting thereon such buildings, or making such adaptations of existing buildings, as, in their opinion, are required for the due occupation of the land, and cannot be made by the landholders or cottars or fishermen.

(5) Where any right of grazing or other similar right is attached to land acquired by the Board for the purposes of this Act, the Board may attach any share of the right to any holding in such manner and subject to such regulations as they think proper.

(6) The Board may accept any gifts of property, heritable or moveable, for any or all of the purposes for which money is provided by this Act, and apply them according to the directions of the donor, if consistent in their opinion with the purposes on which they apply the said money, and, subject to any such directions, may apply them in like manner as that money.

6. *Security for and Repayment of Loan.*—Any loan under the provisions of this Act shall be secured by a bond which shall be a charge on the holding in favour of the Board, and shall either be repaid by half-yearly instalments of principal with such interest and within such term (not exceeding a period fixed by the Treasury) from the date of the loan, or at such date thereafter not exceeding eighteen months as may be agreed on, or shall be repaid with such interest and within such term by a terminable annuity payable by half-yearly instalments. The amount for the time being unpaid may at any time be discharged, and any such terminable annuity may at any time be redeemed in accordance with tables fixed by the Board. A certificate by the Secretary of the Board that the whole of the loan has been repaid, or that such terminable annuity has been redeemed, shall, without any other instrument, operate as a discharge of the said loan and extinction of the said terminable annuity, as the case may be, and the registration of such certificate in the Register of Sasines shall be equivalent to the registration of a discharge of the said bond.

7. *As to Preparation of Titles Connected with Grants of or Loans over Land.*—(1) The Board shall cause to be prepared and duly registered all deeds, writs, and instruments necessary for completing the title to the land disposed of by them, and for securing the payment of any loan over land made by them, and shall include in the grant or loan the cost so incurred, or to be incurred, in accordance with scales set forth in tables fixed by the Board.

(2) The Board, if they think fit, may from time to time appoint, at their pleasure, a person duly qualified to carry out the provisions of this section, and shall assign to him such salary or remuneration as they may determine.

[8. *Supplemental.*—(1) The Commissioners shall submit to the Treasury annually, and at any other time, for any special purpose, in the form fixed by the Treasury, an estimate showing the amount proposed by the Commissioners to be expended, and the purposes for which the same is proposed to be expended, and shall not expend any sums except in accordance with such estimate and for such purposes when approved by the Treasury.

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(2) The Commissioners shall keep such accounts of their receipts and expenditure, and those accounts shall be audited in accordance with such regulations, as the Treasury direct, and be laid before Parliament.]

9. *Report to Parliament.*—The Board shall once in every year make a report to the Secretary for Scotland on their proceedings under this Act, and every such report shall be forthwith presented to Parliament.

10. *Definitions.*—In this Act unless the subject or context otherwise requires—

The expression “congested district” means any crofting parish or crofting parishes, or any area in a crofting parish or crofting parishes, defined by the Board under this Act, which they shall, having regard to the population and valuation thereof, determine to be a congested district.

The expressions “landholder,” “cottar,” and “crofting parish” have the meanings assigned to them in the Crofters’ Holdings (Scotland) Acts, 1886 and 1911.¹

¹ For “landholder” see section 2 of 1911 ; “cottar,” section 34 of 1886 ; and “crofting parish,” section 31 (2) of 1911.

11. *Short Title.*—This Act may be cited as the Congested Districts (Scotland) Act, 1897.

CODE

OF

THE SMALL LANDHOLDERS ACTS, 1886-1911.

IN this Code every provision of the Acts is contained under the heading of the subject to which it is appropriate. The exact words of the Acts are retained, but everything which has to do with one subject is brought together without regard to the place the several provisions hold in order in the Acts from which they are taken. In every case, however, the source from which the provision is taken is shown by reference to the Act and section. The way to use the Code is for anyone who desires to consult the provisions under any particular head to refer first of all to the Contents of the Code, and then on finding the desired heading to consult the provisions which are marshalled under that heading in the body of the Code. In one or two cases an irrelevant fragment may be found where a complete section is given, but these fragments have not been overlooked under their proper headings.

CODE.

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CODE.

I.—GENERAL PROVISIONS.

(*From 1911 Act.*)

36. *Short Title and Construction.*—This Act may be cited as the Small Landholders (Scotland) Act, 1911, and shall be read and construed with the Crofters Acts; and the Crofters Acts and this Act may be cited as the Small Landholders (Scotland) Acts, 1886 to 1911.

37. *Extent of Act.*—This Act shall extend to Scotland only.

38. *Commencement of Act.*—This Act shall commence on the first day of April nineteen hundred and twelve.

39. *Repeal.*—The Acts specified in the Second Schedule¹ to this Act are hereby repealed to the extent mentioned in the third column of that schedule: Provided that such repeal so far as relating to lighthouses shall not operate so as to preclude the Board from maintaining or from defraying the expense of maintaining any lighthouse at the passing of this Act maintained by or at the expense of the Congested Districts (Scotland) Commissioners, unless and until the expense of such maintenance is by arrangement with the Board (which the Board are hereby empowered to enter into on such terms as may be agreed) undertaken by some other authority.

1. *Crofters Acts Applied throughout Scotland.*—From and after the commencement of this Act, and subject to the provisions thereof, the Crofters Acts shall be read and construed as if the expression “landholder” were substituted for the expression “crofter” occurring therein, and shall have effect throughout Scotland.

¹ See p. 67.

II.—HOLDINGS AND PERSONS TO WHICH ACTS APPLY.

(*From 1911 Act.*)

2. *Who to be Landholders.*—(1) In the Crofters Acts and this Act (herein-after referred to collectively as the Landholders Acts) the word “holding” means and includes—

- (i) As from the commencement of this Act, every holding which at the commencement of this Act is held by a crofter to whom in respect of such holding the Act of 1886 applies (herein-after referred to as an existing crofter)¹;
- (ii) As from the commencement of this Act, and subject as herein-after provided, every holding which at the commencement of this Act is held by a tenant from year to year who resides on or within two miles from the holding, and by himself or his family cultivates the holding with or without hired labour (herein-after referred to as an existing yearly tenant);
- (iii) As from the termination of the lease, and subject as herein-after provided, every holding which at the commencement of this Act is held under a lease for a term longer than one year by a tenant who resides on or within two miles from the holding, and by himself or his family cultivates the holding with or without hired labour (such tenant, or his heir or successor, as the case may be, holding under the lease at the termination thereof being herein-after referred to as a qualified leaseholder):

Provided that such tenant from year to year or leaseholder—

(a) shall (unless disqualified under section twenty-six of this Act) be held an existing yearly tenant or a qualified leaseholder within the meaning of this section in every case where it is agreed

¹ *I.e.* a person who at the passing of the Act of 1886 was a resident tenant of a holding from year to year in a crofting parish at a rent not exceeding £30 per annum, and his successors in the holding being his heirs or legatees (see section 34, now repealed, of 1886 Act).

between the landlord and tenant or leaseholder, or in the event of dispute proved to the satisfaction of the Land Court, that such tenant or leaseholder or his predecessor in the same family has provided or paid for the whole or the greater part of the buildings or other permanent improvements on the holding without receiving from the landlord or any predecessor in title payment or fair consideration therefor; and

(b) in every other case shall not be held an existing yearly tenant or a qualified leaseholder within the meaning of this section, but shall (unless disqualified under section twenty-six of this Act) in respect of the holding be subject to the provisions of this Act regarding statutory small tenants;

- (iv) As from the date of registration, every holding which is constituted by the registration of an applicant in respect thereof on his application under the provisions of this Act respecting the constitution of new holdings (herein-after referred to as a new holder).

(2) In the Landholders Acts the word "landholder" means and includes, as from the respective dates above mentioned, every existing crofter, every existing yearly tenant,¹ every qualified leaseholder,¹ and every new holder, and the successors of every such person in the holding being his heirs or legatees.

26. *Supplementary Provisions and Restrictions.*—(1) For the purposes of the Landholders Acts, a holding shall be deemed to include any right in pasture or grazing land held or to be held by the tenant or landholder whether alone or in common with others, and the site of any dwelling-house erected or to be erected on the holding or held or to be held therewith, and of any offices or other conveniences connected with such dwelling-house.

(2) A person shall not be admissible to registration as a new holder under this Act in respect of land belonging to more than one landlord or in respect of more than one holding and

¹ As to adjustment of rights, see p. 131.

shall not be held an existing yearly tenant or a qualified leaseholder in respect thereof unless such land or holdings have been worked as one holding.

(3) A person shall not be held an existing yearly tenant or a qualified leaseholder under this Act in respect of—

- (a) Any land the present rent of which within the meaning of this Act exceeds fifty pounds in money, unless such land (exclusive of any common pasture, or grazing, held or to be held therewith) does not exceed fifty acres (but without prejudice to the power of the Land Court, in determining from time to time a fair rent, to fix a rent exceeding fifty pounds); or
- (b) Any land being garden ground only, appurtenant to a house, or any land to which as the site of or as required for the protection of or for access to an ancient monument or other object of historical or archæological interest the Land Court determine that the Landholders' Acts should not apply; or
- (c) Any land within the parliamentary, police, or municipal boundary of any burgh or police burgh; or
- (d) Any land being a market garden within the meaning of the Agricultural Holdings (Scotland) Act, 1908; or
- (e) Any land being or forming part of any glebe, or any small holding under the Small Holdings Act, 1892 (55 & 56 Vict. c. 31), or any allotment under the Allotments (Scotland) Act, 1892 (55 & 56 Vict. c. 54), or the Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58); or
- (f) Any land that is not a holding within the meaning of the Agricultural Holdings (Scotland) Act, 1908 (8 Edw. VII. c. 64)¹; or
- (g) Any land being woodland, or being or forming part of the home farm of any estate, or of any policy or park, or of any pleasure ground or other land used for the amenity or convenience of any residence or farm-steading; or being permanent grass park held for the purposes of a business or calling not primarily

¹ See p. 207.

agricultural or pastoral, including that of butcher, cattle-dealer, and the like; or

(*h*) Any land bonâ fide held and used for purposes of public recreation; or

(*i*) Any land acquired, whether compulsorily or by agreement, for any undertaking of a public nature, under the authority of any Act of Parliament or any order having the force of an Act of Parliament.

(4) A person shall not be admissible to registration as a new holder under this Act in respect of any land referred to in paragraphs (*a*), (*b*), (*c*), (*d*), or (*e*), or, except by agreement, in respect of any land referred to in paragraphs (*g*), (*h*), or (*i*) of the immediately preceding subsection, or in respect of any holding which is not either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral.

(5) Nothing in this Act shall operate to prevent the registration of a new holder or the enlargement of a holding (whether by agreement or otherwise in either case) in respect of land comprised in a deer forest or otherwise kept or preserved mainly or exclusively for sporting purposes, but subject always to the provisions of section seven and section sixteen of this Act, as the case may be.

(6) Notwithstanding anything contained in subsection one of this section, the holding of any existing yearly tenant or qualified leaseholder within the meaning of this Act shall not for the purposes of the Landholders Acts be deemed to include any lands or heritages at the commencement of this Act forming part of such holding and occupied by a subtenant of such existing yearly tenant or qualified leaseholder, whether paying rent or not.

(7) A person shall not be held an existing yearly tenant or a qualified leaseholder under this Act in respect of a holding referred to in section thirty-three of the Act of 1886, but nothing in that section shall operate to prevent the registration of a new holder by agreement in respect of a holding referred to therein, or the application of the Landholders Acts to such new holder and his statutory successors in respect of the holding. For the word "nor" where last occurring in that section the word "or" is hereby substituted.

(8) The provisions of section two of this Act shall extend to and include joint tenants being existing crofters, existing yearly tenants, or qualified leaseholders; but not more than one person shall be registered as a new holder in respect of any holding, and (without prejudice to the continuance of a joint tenancy through statutory successors) where at any time after the commencement of this Act a holding is held by a single landholder, or a holding which has been held in joint tenancy ceases to be so held, it shall not be competent for more than one person to be a landholder in respect of such holding.

(9) Except so far as may be inconsistent with any express provision of this Act the tenancy of a landholder under the Landholders Acts shall, in the case of every existing crofter, be deemed to be in all respects a continuance of his tenancy as a crofter under the Crofters Acts, and all contracts and other deeds and documents shall be read and construed accordingly.

(10) A person shall not be subject to the provisions of this Act regarding statutory small tenants who in terms of this section would be disqualified from being an existing yearly tenant or a qualified leaseholder.

(From 1886 Act.)

33. *Saving in Case of Holdings in Possession of Servants.*— Nothing in the Landholders Acts shall apply to any holding or building let to a person during his continuance in any office, appointment, or employment of the landlord, or of any tenant of the landlord, nor to any holding or building let at a nominal rent, or without rent, as a pension for former service, or on account of old age or poverty, nor to any holding or building let to a person during his tenure of any office such as that of minister of religion or schoolmaster, or to any innkeeper or tradesman placed in the district by the landlord for the benefit of the neighbourhood.

III.—LANDHOLDERS' TENURE.

(1) *RENTS AND CONDITIONS.**(From 1856 Act.)*

1. *A Landholder shall not be Removed except for Breach of Statutory Conditions.*—A landholder shall not be removed from the holding of which he is tenant except in consequence of the breach of one or more of the conditions following in the Landholders' Acts referred to as statutory conditions, but he shall have no power to assign his tenancy.

(1) The landholder shall pay the rent at the terms at which it is due and payable:

(2) The landholder shall not exercise any deed purporting to assign his tenancy:

(3) The landholder shall not, to the prejudice of the interest of the landlord permanently injure the holding by the dilapidation of buildings or other action has been given by the landlord to the landholder not to commit or to desert from the permanent injury specified in such notice, by the deterioration of the soil:

(4) The landholder shall not, without the consent of the landlord in writing, subdivide his holding or sublet the same or any part thereof or erect or suffer to be erected thereon any dwelling-houses otherwise than in substitution for those already upon the holding at the time of the passing of this Act¹:

(5) The landholder shall not permanently violate any written condition agreed by him for the protection of the interest of the landlord or of neighbouring landholders which is legally applicable to the holding and which the Land Court shall find to be reasonable:

(6) The landholder shall not do any act whereby he becomes a bankrupt within the meaning of the Bankruptcy (Scotland) Act 1856 (19 & 20 Vict. c. 79), and the Debtors (Scotland) Act 1880 (43 &

¹ See p. 125.

44 Vict. c. 34), and shall not execute a trust-deed for behoof of creditors :

- (7) The landlord or any person or persons authorised by him in that behalf (he or they making reasonable compensation for any damage to be done or occasioned thereby), shall have the right to enter upon the holding for any of the purposes following (that is to say) :

Mining or taking minerals, or digging or searching for minerals ;

Quarrying or taking stone, marble, gravel, sand, clay, slate, or other workable mineral ;

Cutting or taking timber or peats, excepting timber and other trees planted by the landholder or his predecessors in the holding, being of the same family, or that may be necessary for ornament or shelter, and excepting also such peats as may be required for the use of the holding ;

Opening or making roads, fences, drains, and watercourses ;

Passing and re-passing to and from the shore of the sea or any loch with or without horses and carriages for exercising any right of property or other right belonging to the landlord ;

Viewing or examining at reasonable times the state of the holding and all buildings or improvements thereon ;

Hunting, shooting, fishing, or taking game or fish, wild birds, or vermin. The word "game" for the purposes of this subsection means deer, hares, rabbits, pheasants, partridges, quails, landrails, grouse, blackgame, capercaillie, ptarmigan, woodcock, snipe, wild duck, widgeon, and teal ;

And the landholder shall not obstruct the landlord, or any person or persons authorised by him in that behalf as aforesaid, in the exercise of any right reserved or conferred by this subsection.

- (8) The landholder shall not on his holding, without the

consent of his landlord, open any house for the sale of intoxicating liquors.

(From 1911 Act.)

10. *Additional Statutory Conditions.*—The following conditions are hereby prescribed as statutory conditions additional to or in modification of those prescribed in section one of the Act of 1886:—

- (1) The landholder shall, by himself or his family, with or without hired labour, cultivate his holding, without prejudice to the right (which is hereby conferred upon him) to make such use thereof for subsidiary or auxiliary occupations as in case of dispute the Land Court may find to be reasonable and not inconsistent with the cultivation of the holding; provided that the expression "cultivate" in this subsection shall include the use of a holding for horticulture or for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit, vegetables, and the like:
- (2) The expression "passing of this Act" in subsection four of section one of the Act of 1886 shall, in the application of that subsection to landholders other than existing crofters and the statutory successors of existing crofters, be construed as meaning the date at which the Landholders Acts first applied to the holding: Provided always that nothing in the said subsection shall be construed as debarring a landholder from subletting his dwelling-house to holiday visitors; and provided further that the provision as to dwelling-houses in the said subsection shall not apply to a new holder, but a new holder and his statutory successors shall not, without the consent in writing of the landlord and the Board erect or suffer to be erected on the holding more than one dwelling-house:
- (3) Nothing in subsection seven of section one of the Act of 1886 shall be construed as precluding a landholder

from recovering any compensation for damage by game which under section nine of the Agricultural Holdings (Scotland) Act, 1908 (8 Edw. VII. c. 64), is recoverable by a tenant, and the last-mentioned section shall apply accordingly with the substitution of the Land Court for arbitration.

12. Use by Landlord of Water Rising on a Holding.—A landlord may, on payment of compensation for any surface damage, use for any estate purpose any springs of water rising on a holding and not required for the use thereof; Provided that any dispute as to the requirements of the holding or the amount of compensation under this section shall be determined by the Land Court; and provided further that nothing herein contained shall be construed as affecting the rights of any persons other than the landlord and the landholder.

(From 1886 Act.)

12. . . . Peat, etc.—It shall be competent for the Land Court to draw up a scheme regulating the use by landholders on the same estate of seaweed for the reasonable purposes of their holdings, peat bogs, and heather or grass used for thatching purposes, and to include the charge for all these in the fixed rent.¹

(2) RENT.

(From 1911 Act.)

13. Present Rent.—The rent payable by a landholder as one of the statutory conditions shall be the present rent, that is to say, the yearly rent, including money and any prestations other than money,—

(a) In the case of existing crofters, payable for the year current at the passing of the Act of 1886, or, where the rent so payable has been altered in terms of that Act, payable for the year current at the commencement of this Act;

(b) In the case of existing yearly tenants, payable for the year current at the commencement of this Act; and

¹ As to penalties, see p. 148, top.

- (c) In the case of qualified leaseholders or statutory small tenants becoming landholders, and in the case of new holders, and in the case of landholders whose holdings are enlarged, payable or fixed in respect of the last year of the lease or tenancy, or at the date of registration, or at the date of enlargement, as the case may be :

in each case unless and until the present rent is altered in manner provided by the Landholders Acts.

(*From 1886 Act.*)

5. *Rent Altered by Agreement.*—The rent may be altered by agreement between the landlord and the landholder to such amount and for such period as may be agreed on ; and the rent so agreed on shall be the rent payable by the landholder so long as such agreement subsists, and after the expiry thereof so long as no different rent shall have been fixed by the Land Court upon the application of the landlord or the landholder, and so long as no new agreement between the landlord and the landholder shall have been made.

6. *Fixed Rent.*—(1) The landlord or the landholder may apply to the Land Court to fix the fair rent to be paid by such landholder to the landlord for the holding, and thereupon the Land Court, after hearing the parties and considering all the circumstances of the case, holding, and district, and particularly after taking into consideration any permanent or unexhausted improvements on the holding and suitable thereto which have been executed or paid for by the landholder or his predecessors in the same family, may determine what is such fair rent, and pronounce an order accordingly.

(2) The rent fixed by the Land Court (in this Act referred to as the fixed rent) shall be deemed to be the rent payable by the landholder as from the first term of Whitsunday or Martinmas next succeeding the decision of the Land Court, and shall come in place of the present rent, and, save by mutual agreement, the fixed rent shall not be altered for a period of seven years from such term.

(3) Where the Land Court shall fix a rent which shall be less in amount than the present rent, the landholder shall be entitled to deduct from the amount of the fixed rent such sum or sums as he may have paid over and above the amount of the fixed rent in respect of the period between the date of the notice of application to fix the fair rent and the date when such rent was fixed.

(4) When an application is lodged with the Land Court to fix a fair rent, it shall be in the power of the Land Court, either under the same or under another application of the landholder, to sist all proceedings for the removal of the landholder in respect of non-payment of rent till the said application is finally determined, upon such terms as to payment of rent or otherwise as it shall think fit.

(5) In the proceedings on such application the Land Court shall take an account of the amount of arrears of rent due or to become due before the application is finally determined, and may take evidence of all the circumstances which have led to such arrears, and shall decide whether, in view of such circumstances, the whole or what part of such arrears ought to be paid, and whether in one payment or by instalments, and at what dates the same should be paid, and the amount and dates so fixed shall be deemed to be the total amount of such arrears due by the landholder, and the terms at which the same become payable.

20. *Procedure in Fixing Fair Rent.*—When an application is made to the Land Court to fix a fair rent, intimation thereof shall be given to the other party interested in the holding, landlord or landholder, as the case may be, and the Land Court shall appoint a time and place at which parties shall be heard in reference to the matter of the application.

It shall be competent for the Land Court in case of such application to visit the holding, if it thinks fit, as also to call in the aid of an assessor or assessors, specially qualified by local knowledge or otherwise, and to hear the case wholly or partially with the aid of such assessor or assessors, or it may obtain a valuation or report from a competent valuer or valuers appointed by it for the purpose.

(*From 1911 Act.*)

8. (4) *Record*.—The Land Court shall, on the application of the Board or of the landlord or the landholder, append to their order fixing a fair rent for a holding a record specifying the condition of the cultivation of the holding and of the buildings, and other permanent improvements thereon, and by whom the permanent improvements have been executed or paid for.

(*From Agriculture Rates Act, 1896.*)

6. *Rates and Rent*.—In the case of any holding in a crofting parish the Land Court in fixing a fair rent for such holding shall not be entitled to take into account the relief effected by this Act from a proportion of the consolidated rate, poor rate, and other rates before mentioned.¹

(*From 1887 Act.*)

2. *Stay of Proceedings for Sale of Landholder's Effects*.—Any landholder who has made or shall make an application to the Land Court to fix a fair rent for his holding, and against whom legal proceedings have been taken for payment of rent, may apply, under the same or any subsequent application, to the Land Court for an order prohibiting the sale of the landholder's effects upon the said holding by virtue of any decree for payment of such rent; and the Land Court, if satisfied that such sale would have the effect of defeating in the case of such landholder the intention of the Landholders Acts, may, upon such terms as to payment of rent or otherwise as it shall think fit, grant an order prohibiting such sale till the application to fix a fair rent has been finally determined.

Any application under this section shall be made at any time before the expiration of the *induciae* in the action.

The Land Court shall consider and determine applications under this section summarily. The powers conferred by this Act are in addition to those contained in subsection four of section six of the Crofters' Holdings (Scotland) Act, 1886, and where any landholder has, subsequent to the said Act coming into operation, granted a bill or promissory note at the request

¹ See p. 214.

of his landlord for arrears of rent, the Land Court shall not be precluded from dealing with such arrears under the said Act; and where any landholders shall have been called on to pay, and shall have paid, to the holder of such bill or note any larger sum than the Land Court shall hold ought to be paid of such arrears, it may give relief by ordering repayment of such excess by the landlord, or authorise the deduction thereof from future rents in such instalments as it may fix.

3. *As to Notour Bankruptcy of Landholder.*—Any landholder in whose favour an order has been granted under the immediately preceding section shall not, for the purposes of section one of the said Act of 1886, be held to become notour bankrupt by reason of any decree obtained or diligence done before or during the subsistence of such order, and for the rent to which such order relates: Provided always, that this section shall not after the decision of the Land Court on the arrears due by such landholder, continue to apply to such decrees or diligence as shall not be invalidated by such decision.

(3) RESUMPTION BY LANDLORD.

(*From 1886 Act.*)

2. *Provision for Resumption by Landlord.*—Notwithstanding the provisions contained in the preceding section, the Land Court may, on the application of the landlord, and upon being satisfied that he desires to resume the holding or part thereof, for some reasonable purpose, having relation to the good of the holding or of the estate, including the using, letting, or feuing the land proposed to be resumed, for the building of dwellings, or for small allotments, or for harbours, piers, boat shelters, or other buildings, or for churches or other places of religious worship, or for schools, or for planting, or for roads practicable for carriages from the croft or crofts to the high road or the seashore, authorise the resumption thereof by the landlord upon such terms and conditions as the Land Court shall think fit, and may require the landholder to surrender his holding, in whole or in such part, to the landlord, upon the landlord making adequate compensation to the landholder, either by letting to him other land of equivalent value in the neighbour-

hood, or by reduction of rent, or by compensation in money, or otherwise as the Land Court shall determine.

(*From 1911 Act.*)

19. Declaration of Law as to Resumption of Holdings.—Without prejudice to the generality of the power to authorise resumption by the landlord for some reasonable purpose having relation to the good of the holding or of the estate, conferred by section two of the Act of 1886, the feuing of land, or the occupation by a landlord for the purpose of personally residing thereon of a holding, being his only landed estate, or the protection of an ancient monument or other object of historical or archæological interest from destruction or injury, shall respectively be deemed a reasonable purpose as aforesaid.

14. Adjustment of Rights by Land Court.—In the case of resumption by a landlord, or in the case of an existing yearly tenant or a qualified leaseholder or statutory small tenant becoming a landholder, the rights of parties interested, so far as affected by the operation of this Act, at the date of resumption or date when such tenant or leaseholder becomes a landholder, as the case may be, shall in the event of dispute be adjusted by order of the Land Court, which order it is hereby empowered to pronounce on the application of any party interested.

(4) REMOVAL.

(*From 1886 Act.*)

3. Removal of Landholders for Breach of Conditions.—When one year's rent of the holding, but less than two years' rent, is due and unpaid, the landholder shall be liable to be removed in manner provided by section twenty-seven of the Agricultural Holdings (Scotland) Act, 1883 (46 & 47 Vict. c. 62).

When two years' rent of the holding is due and unpaid, or when the landholder has broken any other of the statutory conditions, he shall be liable to be removed in manner provided by the fourth section of the Act of Sederunt anent Removing of the fourteenth day of December one thousand seven hundred and fifty-six.

(5) RENUNCIATION.

(From 1886 Act.)

7. *Renunciation of Tenancy.*—A landholder shall be entitled, upon one year's notice in writing to the landlord, to renounce his tenancy as at any term of Whitsunday or Martinmas.

(From 1911 Act.)

18. *Amendment of Law as to Renunciation of Holdings.*—Section seven of the Act of 1886 shall be amended by the insertion at the end thereof of the following words:—

Provided that such notice shall not, without the consent of the Land Court, be effective unless, within two months from the date of notice, the landlord or the landholder intimates the same in writing to the Board, and provided further that except by agreement with the Board the landholder shall not without the like consent be entitled to renounce his tenancy so long as any liability owing by him to the Board is not wholly discharged.

(6) COMPENSATION FOR IMPROVEMENTS.¹*(From 1886 Act.)*

8. *Compensation to Landholder for Improvements on Removal.*—When a landholder renounces his tenancy or is removed from his holding, he shall be entitled to compensation for any permanent improvements, provided that—

- (a) The improvements are suitable to the holding;
- (b) The improvements have been executed or paid for by the landholder or his predecessors in the same family;
- (c) The improvements have not been executed in virtue of any specific agreement in writing under which the landholder was bound to execute such improvements.

9. . . .—The provisions of the preceding section and of this section shall not apply to any buildings erected by a landholder or a cottar in violation of any interdict or other judicial order.

10. *Principle of Valuation.*—Improvements shall be valued under this Act at such sum as fairly represents the value of the improvement to an incoming tenant, provided that in fixing

¹ As to cottars, see p. 158.

the amount of compensation payable, the value of any assistance or consideration which may be proved to have been given by the landlord or his predecessors in title, in respect of such improvements shall be taken into account, and deducted from such compensation, and the value of any deterioration committed or permitted by the tenant within the four years preceding shall also be deducted from the said compensation.

31. *Saving of 46 & 47 Vict. c. 62.*—Nothing in this Act shall affect the provisions of the Agricultural Holdings (Scotland) Act, 1883, provided that:

Where any improvements are valued under the said Act with a view to compensation to be paid to a landholder, such valuation shall be made, unless the landlord and the landholder otherwise agree, by the Land Court, according to the procedure prescribed by the Landholders Acts.

34. . . . *Definition.*—In the Landholders Acts “permanent improvements” means the improvements specified in the Schedule to this Act.

SCHEDULE.

PERMANENT IMPROVEMENTS.

1. Dwelling-house.
2. Farm offices.
3. Subsoil or other drains.
4. Walls and fences.
5. Deep trenching.
6. Clearing the ground.
7. Planting trees.
8. Making piers or landing-stages.
9. Roads practicable for carriages from the holding or holdings to the public road or the seashore.
10. All other improvements which, in the judgment of the Land Court, shall add to the value of the holding to an incoming tenant.

(From 1911 Act.)

23. *Arrears of Rent to be Set Off Against Compensation for Improvements.*—If a landholder either renounces or is removed from his holding the landlord shall be entitled to set off all rent due or to become due against any sum found to be due to the

landholder or to the Board for improvements made on the holding.

(7) SUCCESSION AND BEQUEST.

(*From 1886 Act.*)

19. . . . *Succession.*—This Act shall apply to every landholder, and to his heirs and legatees in the same manner as if the tenancy were a lease.

In the event of the heirs-at-law of the landholder being heirs-portioners, the eldest of such heirs-portioners shall succeed to the tenancy without division.

(*From 1911 Act.*)

22. *Loss of Rights by Heir in Certain Cases.*—Where, owing to the failure of the landholder to bequeath his tenancy or of the legatee to accept the bequest, the right of the tenancy devolves upon the heir-at-law of the landholder the landlord may give notice in writing to such heir, if his name and address are known to or can by due diligence be ascertained by the landlord, requiring him to state whether or not he elects to accept the tenancy, and in case such heir shall not, within six weeks after the receipt of such notice, declare that he elects to accept the tenancy, his rights to the tenancy shall pass to the next heir, and the same procedure shall apply: Provided that if such heir be furth of the United Kingdom the Land Court may grant such extension of the period herein-before specified as may seem to it to be reasonable. And provided further, that if the name and address of such heir or next heir are not known to, or cannot by due diligence be ascertained by, the landlord, and no application is made by them with regard to the succession to the holding during six months after the death of the last landholder, failure of a statutory successor shall be deemed to have taken place.

21. *Assignment of Holding.*—In the event of a landholder being unable to work his holding through illness, old age, or infirmity, he may apply to the Land Court for leave to assign his holding to a member of his family, being his wife or any person who, failing nearer heirs, would succeed him in the case of intestacy, and if, after intimation to the landlord and any other party interested, and such hearing or inquiry as the

Land Court may consider necessary, it appears to the Land Court that such assignment would be reasonable and proper, it shall be competent to the Land Court to grant such leave on such terms and conditions, if any, as may to it seem fit.

(*From 1886 Act.*)

16. *Bequest of Holding.*—A landholder may, by will or other testamentary writing, bequeath his right to his holding to one person, being a member of the same family; that is to say, his wife or any person who, failing nearer heirs, would succeed to him in case of intestacy (herein-after called the “legatee”), subject to the following provisions:

- (a) The legatee shall intimate the testamentary bequest to the landlord or his known agent within two months after the death of the landholder, unless he is prevented by some unavoidable cause from making intimation within that time, and in that event he shall make intimation as soon as possible thereafter:
- (b) Intimation to the landlord or his known agent by the legatee shall import acceptance of the landholder’s right to the holding by the legatee:
- (c) Within one month after intimation has been made to the landlord or his known agent, he may intimate to the legatee that he objects to receive him as landholder in the holding:

If the landlord or his known agent makes no such intimation within one month, the legatee shall come into the place of the landholder in the holding as from the date of the death of the deceased landholder.

- (d) If the landlord or his known agent intimates that he objects to receive the legatee as landholder in the holding, the legatee may present a petition to the Land Court, praying for decree declaring that he is the landholder therein as from the date of the death of the deceased landholder, of which petition due notice shall be given to the landlord, who may enter appearance and state his grounds of objection; and if any reasonable ground of objection is established to the satisfaction of the Land Court, he shall declare

the bequest to be null and void; but otherwise he shall decern and declare in terms of the prayer of the petition:

- (e) The decision of the Land Court under such petition as aforesaid shall be final:
- (f) Where the legatee shall have presented a petition to the Land Court as aforesaid, the legatee pending any proceedings shall have possession of the holding unless the Land Court shall otherwise direct on cause shown:
- (g) If the legatee shall accept the bequest, and the bequest is not declared to be null and void as aforesaid, the legatee shall be entitled to possess the holding on the same terms and conditions as if he had been the nearest heir of the landholder.
- (h) If the legatee does not accept the bequest, or if the bequest is declared to be null and void as aforesaid, the right to the holding shall descend to the heir of the landholder, in the same manner as if the bequest had not been made.

Provided always, that in the case of any legatee, or heir-at-law more distant than wife, son, grandson, daughter, granddaughter, brother, or son-in-law, it shall be competent to the landlord on his own part, or on the part of neighbouring landholders, to represent that, for the purpose of enlarging their holding or holdings, the holding ought to be added to them; and in all cases in which the Land Court shall determine in favour of such representation, the heir, or the legatee, as the case may be, who, but for such determination, would have succeeded to the holding, shall have right to any claim of compensation for improvements thereon which would have been competent to the deceased landholder if he had been removed at the date of his death: provided further, that if in any such case the landlord shall fail, within six months after the determination of the Land Court, to add the holding to one or more of the adjoining holdings, it shall be competent to the neighbouring landholders to apply to the Land Court, who shall make an order assigning the holding to one or more of the neighbouring landholders for the enlargement of his or their holding or holdings.

IV.—NEW HOLDINGS.

(From 1911 Act.)

7. Powers to Facilitate the Constitution of New Holdings.—

(1) It shall be lawful for the landlord of any land and any other person to agree that in respect of such land such person may apply to the Land Court to be registered as a new holder under this Act, and such person may thereupon apply accordingly, and subject to the provisions of this Act may be so registered.

(2) It shall be the duty of the Commissioner for Small Holdings to report from time to time to the Board after due inquiry what demand for small holdings exists in any district, and after consultation (where practicable) with the landlord or landlords what land (if any) is available to meet that demand, without causing undue displacement of farm servants presently employed on or about such land, under what conditions such land is cultivated, and what employment it affords.

(3) Where the Commissioner for Small Holdings is satisfied that there is a demand for small holdings and that suitable land exists it shall be his duty to negotiate with the landlords of such land with a view to the adjustment of a scheme for the registration by agreement of any one or more new holders in respect of such land.

(4) Failing agreement, such land may, otherwise than by agreement, be made available for the registration of new holders in the manner and subject to the conditions hereinafter prescribed.

(5) In proceeding under this section, the Board shall take steps to ascertain what land is falling or is about to fall out of lease where the present tenant is not an offerer, and shall preferably select such land (if otherwise suitable) for the constitution of new holdings otherwise than by agreement.

(6) Where a new holder is registered under this section by agreement, the rent agreed between the landlord and the new holder shall not, if the same shall have been agreed upon for a specified period, be altered by the Land Court during such period, and shall not in any case be altered by the Land Court

for a period of seven years from the term at which it first becomes payable.

(7) Where, with a view to, or as incidental to, the registration of a new holder or holders in respect of any land, whether by agreement or otherwise, the Board are of opinion, upon consideration of a report by the Commissioner for Small Holdings, that assistance should be provided for the purpose of dividing, fencing, or otherwise preparing or adapting the land, making occupation roads, or executing other works, such as works for the provision of drainage or water supply, or erecting or adapting a dwelling-house or dwelling-houses or other buildings, or for any similar purpose, the Board may provide such assistance by way of loan or (except as regards dwelling-houses or other buildings) by way of gift, and subject to such conditions as they may prescribe. Conditions so prescribed and the provisions for their enforcement or for the case of their violation shall be as effectual as if they were contained in this Act.

(8) Where the Board are of opinion that damage or injury will be done to any tenant in respect that the land forms part or the whole of his tenancy, they shall pay compensation as may be agreed between the Board and such tenant.

(9) Where the Commissioner for Small Holdings reports that the landlord refuses to negotiate, or where, after submitting to the landlord a scheme for the constitution of one or more new holdings on the land, he reports that no agreement can be reached, it shall be lawful for the Board, after due notice and after hearing any party who desires to be heard, to intimate to the landlord and to other parties concerned that it is in the public interest that one or more new holdings should be constituted on the land in accordance with the said scheme, and that they propose to apply to the Land Court to make an order or orders for the constitution of one or more new holdings on the land in accordance with such scheme, to be occupied by new holders, at a fair rent and upon such terms and conditions not inconsistent with the Landholders Acts as the Land Court consider just; and thereafter to apply accordingly.

(10) Before making such an order, the Land Court shall

give all parties having a right or interest in the land an opportunity of being heard.

(11) The Land Court shall thereafter determine, with due regard to the provisions of the Landholders Acts, and by order or orders declare—

- (a) In respect of what land, if any, specified in the scheme, one or more holdings for new holders may respectively be constituted, and up to what date the power to constitute them otherwise than by agreement may be exercised;
- (b) What is the fair rent for each new holding;
- (c) What land, if any, specified in the scheme is to be excluded therefrom; and
- (d) Whatever else may be necessary for the purpose of making the scheme effective and of adjusting the rights of all parties interested in or affected by the proceedings:

Provided that, where the Land Court are of opinion that damage or injury will be done to the letting value of the land to be occupied by a new holder or new holders, or of any farm of which such land forms part, or to any tenant in respect that the land forms part or the whole of his tenancy, or to any landlord either in respect of an obligation to take over sheep stock at a valuation or in respect of any depreciation in the value of the estate of which the land forms part in consequence of and directly attributable to the constitution of the new holding or holdings as proposed, they shall require the Board, in the event of the scheme being proceeded with, to pay compensation to such amount as the Land Court determine after giving parties an opportunity of being heard and, if they so desire, of leading evidence in the matter: Provided always that where within twenty-one days after the receipt from the Land Court of an order under this subsection a landlord or a tenant, as the case may be, intimates to the Land Court and to the Board that he claims compensation to an amount exceeding three hundred pounds, and that he desires to have the question whether damage or injury entitling him to compensation as aforesaid will be done, together with the amount of such compensation (if any), to be settled by arbitration

instead of by the Land Court, the same shall be settled accordingly; and at any time within fourteen days after the said intimation, failing agreement with the Board as to the appointment of an arbiter, it shall be lawful for him to apply to the Lord Ordinary on the Bills for such appointment, and the Lord Ordinary shall forthwith, on receipt of such application, nominate a single arbiter to decide the questions aforesaid, whose award shall be final and binding on the Board, in the event of the scheme being proceeded with; and if no final award be given within three months from the date when the arbiter is nominated, the questions aforesaid shall be decided by the Land Court as hereinbefore provided:

Provided that the Arbitration (Scotland) Act, 1894, shall not apply, and the Second Schedule to the Agricultural Holdings (Scotland) Act, 1908, shall apply to any such arbitration, with the exception of paragraphs one, five, ten, eleven, and sixteen thereof, and with the substitution of the Lord Ordinary for the Sheriff and the Auditor of the Court of Session for the Auditor of the Sheriff Court; and provided further that in the event of the scheme not being proceeded with, the expenses of parties reasonably incurred in connection with the arbitration as the same may be allowed by the Auditor of the Court of Session shall be paid by the Board.

In determining the amount of compensation under any provision of this Act no additional allowance shall be made on account of the constitution or enlargement of any holding being compulsory.

(12) In or after making such an order, the Land Court (without prejudice to their other powers) may do, provide, or decide anything incidental to or consequential on such an order as if it were an order under section twelve of the Act of 1886, and may, if they think fit, provide for the incorporation with the order, subject to the necessary adaptations, of any provisions of the Lands Clauses Acts which appear to them requisite for carrying the order into effect.

(13) Upon such an order providing for the constitution of one or more new holdings on any land being issued, the Board may proceed to make it effective by entering on the land, carrying out works, and otherwise as may be required (due

compensation to such amount as may be agreed or as, in case of dispute, may be determined by the Land Court being made for surface damage), and may negotiate with one or more duly qualified applicants with a view to their registration as new holders in respect of the land.

(14) A new holder shall not be duly qualified for registration otherwise than by agreement who does not satisfy the Board as to his ability to fulfil the obligations incumbent on him.

(15) The Board shall give reasonable consideration to objections stated by a landlord to any applicant for a new holding, and *ceteris paribus* shall give a preference to applicants preferred by the landlord.

(16) Except by agreement, a new holder shall not be registered—

(a) in respect of any land being or forming part of a farm not exceeding one hundred and fifty acres occupied by a person who has no personal interest in any other farm, or in the case of a farm so occupied which exceeds one hundred and fifty acres but is wholly or mainly pastoral, not exceeding an annual value as entered in the valuation roll of eighty pounds: Provided that nothing herein contained shall operate to prevent the registration otherwise than by agreement of two or more new holders in respect of the whole of such farm, not being a farm wholly or mainly pastoral, where no other land is available in the neighbourhood of any existing village or township; or

(b) in respect of any land being or forming part of a farm occupied subject to a lease which was in force at Whitsunday nineteen hundred and eleven, or in the case of land within the counties specified in section nineteen of the Act of 1886 at Whitsunday 1906, so long as the lease remains in force.

(17) All parties being possessed of lands or any right or interest therein who under the Lands Clauses Acts have power on behalf of themselves or of others to convey and dispose of such lands, or of such rights therein for the purposes men-

tioned in those Acts, shall have the like power to enter into any agreement or give any consent for the purposes of this section.

(18) Notwithstanding anything contained in the Congested Districts (Scotland) Act, 1897 (60 & 61 Vict. c. 53), the expression "landlord" in this section includes the Board in respect of any land purchased under that Act and transferred to the Board under the provisions of this Act.

(19) Any member of the Land Court, or the Board, or any person authorised in writing by the Land Court or by the Board, may for the purposes of the Landholders Acts enter upon and inspect any lands or buildings at all reasonable hours on any lawful day after due notice has been given to the owner and occupier of such lands or bu

8. *Provisions Regulating Loans to Landholders.*¹—(1) The agreement for any assistance given to a landholder by way of loan under the immediately preceding section shall be recorded in the Landholders Holdings Book, and, as recorded, shall have the effect of transferring to the Board all rights of the landholder and his statutory successors to compensation for permanent improvements up to the amount of any outstanding liability owing to the Board; provided that the amount of such compensation when claimed shall in such case in the event of dispute be assessed by the Land Court, and provided further that any amount due to the Board from a landlord under this section may, if the Board on the application of the landlord so determine, be deemed to be a loan to the landlord (secured on the holding and on any buildings thereon) within the meaning of section six of the Congested Districts (Scotland) Act, 1897 (60 & 61 Vict. c. 53), to which the provisions of that section shall apply.

(2) In the event of breach by a landholder of the conditions of repayment of any loan under the immediately preceding section, the Land Court may, on the application of the Board, and after consideration of any objections stated by the landlord, make an order for the removal of the landholder from the holding as if he had broken a statutory condition, and for the assignation of the holding to some one person (being an appli-

¹ See p. 170 as to landholders other than new holders.

cant therefor) subject to such conditions as they see fit, and such person shall thereupon succeed to the holding of the landholder and shall be deemed to be his statutory successor.

(3) All moneys received for payment of interest or repayment of principal or otherwise in respect of any loan made by the Board under the immediately preceding section shall be paid to the fund out of which the loan was made.

(4) The Land Court shall, on the application of the Board or of the landlord or the landholder, append to their order fixing a fair rent for a holding a record specifying the condition of the cultivation of the holding, and of the buildings and other permanent improvements, and by whom such permanent improvements have been made or paid for.

11. *Obligations of New Holders under Public Health Act.*—Where buildings or other premises within the meaning of the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), have been erected on a holding by or for a new holder, all duties or liabilities imposed on the owner of such premises under any provision relating to the removal or remedy of a nuisance or the provision of a water supply contained in the said Act shall, so long as the landlord receives no rent or other consideration in respect of such buildings or other premises (and failing agreement with the landlord to the contrary), be transferred to and discharged by the landholder, and the said Act shall be read and construed accordingly.

V.—ENLARGEMENT OF HOLDINGS.

(*From 1886 Act.*)

11. *Application by Landholders for Enlargement.*—It shall be lawful for any landholders resident on neighbouring holdings in a parish, where any landlord or landlords after application made to him or them have refused to let to such landholders available land on reasonable terms for enlarging the holdings of such landholders, to apply, setting forth that in the said parish or in an adjacent parish there is land available for the enlargement of such holdings which they are willing to take on lease, but which the landlord or landlords refuse to

let on reasonable terms; that is to say, on such terms as are usually obtained in the letting of land of the like quality, and similarly situated in the same district, for other purposes than that of a deer forest, or of a grouse moor, or other sporting purpose.

(*From 1911 Act.*)

16. *Amendment of Law as to Enlargement of Holdings.*—

(1) The provisions of the Act of 1886, relative to the enlargement of holdings, are hereby extended to an application for enlargement of a holding by a single landholder or two or more landholders, and shall apply in the case of an application by a single landholder as nearly as may be in the same manner and to the same effect as in the case of an application by two or more landholders :

Provided that all applications for enlargement under section eleven of the Act of 1886 shall be made to the Board, and subsections seven, eight, nine, ten, eleven, twelve, thirteen, sixteen, seventeen, and eighteen of the section of this Act relative to the constitution of new holdings shall, with the necessary modifications, apply as fully for the purpose of applications for enlargement as for the purpose of the constitution of new holdings; and the expressions “application” and “applicants,” where occurring in section twelve or section twenty-one of the Act of 1886, shall be construed as meaning an application from the Board under subsection nine aforesaid and the persons referred to in such application.

(*From 1886 Act.*)

21. *Procedure in Enlarging Holdings.*—When an application for an enlargement of landholders’ holdings is made to the Land Court, it shall intimate such application to the landlord or landlords, as also to the tenant or tenants, and any other person or persons in the occupation of or otherwise interested in the land proposed to be added to the landholders’ holdings, including heritable creditors holding securities over the same, and shall give notice of the time or times, and place or places, at which parties will be heard in regard to the matter of the application.

It shall be competent to the Land Court to visit the place to which the application relates, and also if it shall think fit, to call in the assistance of an assessor or assessors, or of a valuer or valuers, as herein-before provided.

12. *Intimation to Landlords and Further Procedure.*—The Land Court shall, upon receiving such an application as aforesaid, intimate the same to the landlord or landlords therein alleged to have refused to let available land for the enlargement of such holdings as aforesaid, and shall afford such landlord or landlords, and the landholders by whom the application is made, an opportunity of being heard thereupon, and shall ascertain as far as possible how far the small size of the holdings has been due to the action of the landlord or of the landholders, and shall make such other inquiry as to it shall appear necessary or proper; and if it is satisfied—

- (1) That there is land in the parish, or in an adjacent parish, available for enlarging the holdings of the said landholders, but that the landlord or landlords refuse to let the same for that purpose on reasonable terms:
- (2) That the applicants are willing and able to pay a fair rent therefor, and that in the event of an order for the letting thereof being made, the applicants are able properly to cultivate the same in so far as it consists of arable land and properly to stock the same in so far as it consists of pasture land;

the Land Court may make an order for a lease of the said land, or such part or parts thereof as it may think proper, to the applicants, or one or more of them, at a fair rent, and upon such terms and conditions as the Land Court shall consider just.

It shall be competent for the Land Court by an order under this section to provide, if this shall appear to it to be just and expedient, for admitting the landholders who have applied as aforesaid, to participate in common pasture occupied by other landholders, or for conferring upon the applicants rights of pasturage common as among themselves

over available land specified in the order, upon such terms and conditions as the Land Court shall determine.

It shall be competent for the Land Court to draw up a scheme regulating the use by landholders on the same estate of seaweed for the reasonable purposes of their holdings, peat bogs, and heather or grass used for thatching purposes, and to include the charge for all these in the fixed rent.

13. (3) (e) *Deer Forest.*—It shall not be competent for the Land Court to assign land for the enlargement of the landholders' holdings—

If the land form part of a deer forest, and if the assignation of such land for the purposes of this Act would seriously impair the use of the remainder as a deer forest, and would act injuriously on the prosperity of the inhabitants generally of the district in which such deer forest is situated.

(*From 1911 Act.*)

16. (2) *Exceptions.*—Land shall not be deemed available land for the enlargement of a holding otherwise than by agreement unless it is land in respect of which a person would be admissible to registration otherwise than by agreement as a new holder under this Act, and, if arable land, unless it lies contiguous or near to land already in the occupancy of the landholder making the application; and provided further that a holding shall not be enlarged so that the rent or acreage thereof shall exceed the rent or acreage competent for a new holding under this Act.

(*From 1886 Act.*)

21. *Fencing.*— . . In assigning land for the enlargement of landholders' holdings, it shall be competent for the Land Court, if it thinks fit, to make such order or orders with respect to the erection and maintenance of fencing of the said land as it shall consider necessary or expedient, and to decern that the expense of such erection and maintenance shall be paid by the person or persons interested, as the Land Court shall consider just, having regard to the advantage accruing to the said person or persons respectively from such fencing.

14. *Deduction from Rent in Case of Enlargement.*—Where a portion of any land held under lease is assigned by the Land Court for the enlargement of the holding or holdings of a landholder or landholders under this Act the Land Court, when it so assigns such land, fixes the amount of the deduction (if any) which in its judgment ought to be made from the rent payable by the tenant under the lease to the landlord, in respect of the portion of the land held under the same having been assigned as aforesaid, and thereafter the tenant under the lease shall be liable to the landlord only in the balance of the rent thereby stipulated, after deduction of the sum so fixed.

15. *Assigned Land.*—Land assigned by the Land Court under the authority of the Landholders Acts shall be deemed to be part of the holding or holdings to which it is so assigned, and shall be subject to the provisions of the Landholders Acts relative to landholders' holdings.

VI.—COMMON GRAZINGS.

(*From 1911 Act.*)

24. *Amendment of Law as to Regulation of Common Grazings, &c.*—(1) The Land Court may prescribe such regulations as to the exercise of pasture, grazing or other rights held or to be held in common under the Landholders Acts as it thinks expedient.

(2) The Land Court shall cause any proceeding under the immediately preceding subsection to be intimated to any person or persons, whether landholders or not, using or claiming to use the pasture or grazing or other rights to which the proceeding relates, and shall hear such person or persons on his or their application, and make such inquiry as it may deem necessary, and may make applicable to such person or persons any regulations prescribed under such proceeding: Provided that such regulations may contain provision for the removal by any person prescribed in the regulations of any stock placed on the common pasture or grazing in contravention of the regulations.

(3) Any person committing a breach of any regulations prescribed under this section or an infringement of any scheme drawn up by the Crofters Commission or the Land Court, as the case may be, under the powers conferred by section twelve of the Act of 1886, shall be liable on conviction before the Sheriff under the Summary Jurisdiction Acts to a penalty not exceeding forty shillings, and in the case of a continuing offence to a further penalty not exceeding five shillings for each day during which such offence shall have been continued after written warning from the committee or from the Land Court, and any such penalty shall be recoverable by imprisonment in terms of the Summary Jurisdiction Acts.

(*From 1891 Act.*)

2. *Appointment of Committee.*—The landholders who share in the same common grazing, may, at a public meeting called by public notice, appoint a committee of such number as the meeting shall think fit who shall be charged with the duty (in so far as such matters are not regulated by conditions binding in terms of section one, subsection five, of the 1886 Act) of making regulations as to the number of stock which each landholder shall be entitled to put on the common grazing and as to any other matters affecting the fair exercise of their joint rights therein by the several landholders.

The notice of meeting may be given by any two landholders interested in the common grazing or other right, and the notice shall be given by being published for two successive weeks in any newspaper circulating in the parish, or by being posted for two successive weeks at or near the door of every place of worship and every public school in the district affected.

In the event of any dispute arising as to the sufficiency of any such notice, such dispute shall be decided summarily by the Land Court, and its decision shall be final.

The regulations so made shall be submitted to the Land Court, who shall cause reasonable notice to be given to the landlord of the said common grazing; and shall hear the parties, if this be desired by any party, and make such inquiry as it may deem necessary; and it shall, in considering the said regulations, have regard to any existing custom in the matters

affected, whether founded on actual title or interpretation; and if any appeal of the proposed regulations with or without alteration, or if any notice to appeal of the same; and when an appeal, such regulations shall come into force and may be altered or altered by the committee from time to time with the like appeal.

3. *Committee of Management.*—Such committee shall remain in office for three years, and at the end of every such period a new committee shall be appointed at a public meeting, and after public notice as aforesaid. Proposing members shall be eligible for re-election. Vacancies occurring by death or resignation shall be filled up by nomination of the remaining members. A majority shall be a quorum. The said committee shall appoint one of their number as secretary and clerk or clerks.

4. *In Failure of Landholders to appoint Committee.*—Land Court may at any time, if the landholders interested in any common grazing shall at any time fail to appoint a committee, the Land Court may, after making such inquiry, if any, as the Land Court may think necessary, appoint a committee who shall have the same duties and powers, and remain in office for the same period as if they had been appointed by the landholders; and in the event of such committee failing to make regulations within three months after their appointment, the Land Court may make such regulations itself.

5. *Power to Stop in Case of Breach of Regulations.*—The committee shall see to the due observance of the regulations, and in case of any breach or nonobservance thereof, they or any two landholders interested in the land(s) may make application to the Sheriff by petition, and the Sheriff may, upon such application, make such order as he/she may think fit for the enforcement of the said regulations by granting warrant for the sale of surplus stock and disposal of the proceeds by paying the same to be paid to the owner of such stock under deduction of expenses or by imposition of penalties or otherwise as he shall think fit. And he shall have power to award expenses, and such expenses as the committee may duly incur and will recover

shall be paid by the landholders proportionately to the amount of their rents, conform to a decree which may be granted by the Sheriff on the application of such committee.

(*From 1908 Act.*)

2. *Committee—Regulations ex proprio motu and Penalties.*—The power to appoint a committee and to make regulations conferred by section four of the Crofters' Common Grazings Regulation Act, 1891, may be exercised by the Land Court, if they think fit, without any request from a landlord or landholders interested, and without prejudice to the powers conferred by section five of the said Act any person committing a breach of any regulations made and approved under the said Act shall be liable on conviction before the Sheriff under the Summary Jurisdiction Acts to a penalty not exceeding forty shillings, and in the case of a continuing offence to a further penalty not exceeding five shillings for each day during which such offence shall have been continued after written warning from the committee or from the Land Court, and any such penalty shall be recoverable by imprisonment in terms of the Summary Jurisdiction Acts. A person appointed by the Land Court may summon and attend any meeting of a committee under the said Act for the purpose of advising such committee in the performance of their duties, and may otherwise assist in the administration of the said Act as may be directed by the Land Court.

(*From 1911 Act.*)

24. (4) *Removal of Committee, Constables, &c.*—The Land Court may suspend or remove members of a committee under the Act of 1891 as amended, if satisfied that they are not properly carrying out the regulations respecting a common pasture or grazing, and may appoint or provide for the appointment of other persons (whether landholders or not) in their place. Where those interested in a common pasture or grazing decline to act on such a committee, the Land Court may appoint any person or persons in the neighbourhood, whether landholders or not, with the powers and duties of such a committee. Where the Land Court are satisfied that in lieu

of such a committee a grazings constable should be appointed or elected for any township or group of townships or persons interested, they may make provision accordingly, and any regulations making such provision shall be deemed to be regulations prescribed under this section, and the grazings constable may enforce such regulations, and shall be paid by assessment upon those using the pasture or grazing in manner provided by the Land Court, but not in excess of sixpence in the pound of rent.

(*From 1891 Act.*)

6. *Recording and Enforcement of Regulations.*—Regulations made in terms of this Act when approved by the Land Court, and any alterations on such regulations when so approved, shall be an order of the Land Court within the meaning of the 1886 Act, and the provisions of the said 1886 Act with respect to the recording and enforcement of orders, and all other procedure shall apply to regulations made under this Act.

7. *Signed Conditions to be Equivalent to Regulations.*—Where all the landholders interested in a common grazing shall have signed a condition or conditions regulating the use of the same, and the Land Court shall have found or shall find such condition or conditions to be reasonable, as provided by section one, subsection five, of the said 1886 Act, such condition or conditions may be recorded and enforced in like manner as if they were regulations made in terms of this Act and approved of by the Land Court.

(*From 1911 Act.*)

24. (5) *Apportionment of Grazings.*—The Land Court may, on the application of the landlord, or landlords, or any landholder, and for such period and on such conditions as it considers equitable, apportion a common grazing into separate parts for the exclusive use of the several townships or persons interested, either as arable ground or as pasture, if satisfied that such apportionment is for the good of the estate or estates, and of the holdings or tenancies concerned.

(6) *Runrig Land.*—The Land Court may, on the application of the landlord, or landlords, or any landholder, apportion

lands held runrig among the holders thereof in such manner as appears to it in the circumstances of each case to be just and expedient.

VII.—VACANT HOLDINGS.

(*From 1911 Act.*)

17. *Amendment of Law as to Vacant Holdings.*—Where, by reason of renunciation, removal, failure of a statutory successor, or otherwise, a holding has at any time ceased or is about to cease to be held by a landholder, the landlord shall forthwith intimate the fact in writing to the Board, and shall not, if the Land Court on their application after hearing the landlord so determine, and during such period and subject to such conditions (which shall include payment of compensation to the landlord by the Board to such amount as may be agreed, or as, in case of dispute, may be determined by the Land Court, in respect of any loss arising out of such determination) as the Land Court may prescribe, be entitled without the consent of the Board to let the holding otherwise than to a neighbouring landholder for the enlargement of his holding, or to a new holder:

Provided that where, under the provisions of the Landholders Acts, the holding was, otherwise than by agreement, constituted as a new holding or enlarged, it shall be the duty of the Land Court, upon an application by the landlord, after hearing the Board, to assess any damage or injury done by the constitution or enlargement of the holding, as the case may be, to the landlord through non-payment of rent in respect of the holding, or depreciation in the letting value of the land comprised in the holding, or through the imposition of liabilities in respect of or the payment of compensation for permanent improvements thereon, and to require the Board to pay the landlord compensation in respect of such damage or injury to such amount as the Land Court determine, subject to the like procedure and right of alternative arbitration as provided in subsection (eleven) of section seven of this Act, but nothing in this proviso contained shall apply to the case of a holding ceasing to be held by a landholder by reason of resumption

by the landlord or by reason of the sale of the holding to the landholder.

32. (3) A holding which is or has been held by a statutory small tenant shall not be merged in or amalgamated with any other holding as defined in the Agricultural Holdings (Scotland) Act, 1908, except with the sanction of the Board.

VIII.—STATUTORY SMALL TENANTS.

(From 1911 Act.)

32. *Provisions as to Statutory Small Tenants.*—With respect to statutory small tenants the following provisions shall have effect:—

- (1) A statutory small tenant means and includes a tenant from year to year, or leaseholder, not otherwise disqualified in terms of this Act, in regard to whom section two of this Act provides that he shall not be held an existing yearly tenant or a qualified leaseholder, and the successors of such tenant or leaseholder in the holding, being his heirs, legatees (if within the relationship specified in section sixteen of the Act of 1886), or assignees (if assignation be permitted by the lease):
- (2) Except so far as expressly applied by this Act, the Landholders Acts shall not apply to statutory small tenants:
- (3) A holding which is or has been held by a statutory small tenant shall not be merged in or amalgamated with any other holding as defined in the Agricultural Holdings (Scotland) Act, 1908 (8 Edw. VII. c. 64), except with the sanction of the Board:
- (4) Except in any case where the landlord satisfies the Land Court that there is reasonable ground of objection to a statutory small tenant (herein-after in this section referred to as the tenant) and the Land Court find accordingly, the tenant for the time being shall, notwithstanding any agreement to the contrary,

be entitled on any determination of the tenancy to a renewal thereof on the terms and conditions hereinafter specified :

- (5) Except so far as varied by this section, the Agricultural Holdings (Scotland) Acts, 1908 and 1910, shall apply in the case of the tenancy of a statutory small tenant in the same manner as if the tenancy were a lease, and for the purposes of those Acts and otherwise the tenancy, as renewed from time to time, shall be deemed to be a lease current for the period of renewal :
- (6) Subject to the provisions of the last-mentioned Acts and of this section, the landlord and the tenant may agree upon the terms and conditions of the renewed tenancy :
- (7) Failing agreement, the landlord or the tenant may apply to the Land Court to fix an equitable rent, or to fix the period for which the tenancy is to be renewed, and the Land Court may thereafter determine the rent to be paid by the tenant or the period of renewal, or both, as the case may be :
- (8) In determining the rent the Land Court shall, so far as practicable, act on their own knowledge and experience, taking into consideration all the circumstances of the case, holding, and district, including the rent at which the holding has been let, the proposed conditions of the renewed tenancy, the improvements made by the landlord and tenant respectively, and the then condition and value of such improvements ; and shall fix as the rent to be paid by the tenant the rent which, in their opinion, would be an equitable rent for the holding between the landlord and the tenant as a willing lessor and a willing lessee : Provided that they shall allow no rent in respect of any improvements made by or at the expense of the tenant or any predecessor in title for which he or his predecessor, as the case may be, has not received payment or fair consideration from the landlord or his predecessor :

- (9) Subject as aforesaid, the terms and conditions of the renewed tenancy shall (except so far as agreed to be varied) be those of the determining tenancy, in the same way and to the same effect, as nearly as may be, as if the tenancy had been continued for the full period of renewal under tacit relocation, and the tenant shall be entitled, if he so desires, to a renewal on those terms and conditions:
- (10) The Agricultural Holdings (Scotland) Acts, 1908 and 1910 (8 Edw. VII. c. 64), as applied by this section, shall be varied as follows (that is to say):—

In the Second Schedule to the Agricultural Holdings (Scotland) Act, 1908 (1 Geo. v. c. 30), the Land Court shall be substituted for the Board, and where in terms of that schedule a person is nominated as arbiter by the Land Court his remuneration shall be paid by the Land Court:

- (11) In the event of the landlord on the renewal of the tenancy failing to provide such buildings as will enable the tenant to cultivate the holding according to the terms of the lease or agreement or at any time failing to maintain the buildings and permanent improvements¹ required for the cultivation and reasonable equipment of the holding, in so far as the tenant is not required at common law or by express agreement in writing to do so, it shall be lawful for the tenant to apply to the Land Court to so find and declare, and if the Land Court after hearing parties (if they desire to be heard) and after giving the landlord (if he so desires) an opportunity of remedying his failure as aforesaid shall so find and declare, the tenant shall as from the date specified in the finding become a landholder;² and the definition of landholder in this Act shall include such tenant and his successors in the holding, being his heirs or legatees:
- (12) It shall be lawful for the Board to provide model

¹ See p. 133.

² As to adjustment of rights, see p. 131.

forms of agreements for optional use by landlords and tenants under this section, provided that nothing herein contained shall make the use of any such form compulsory:

- (13) In the event of any dispute arising as to whether a person is a statutory small tenant within the meaning of this Act, it shall be competent for the Land Court to determine such question summarily:
- (14) Subsection four of section six, section twenty, and section twenty-seven of the Act of 1886, section two of the Act of 1887 down to the word "summarily," and subsection nineteen of section seven, subsection four of section eight, section twelve, section twenty-five, and subsection one of section twenty-six of this Act shall, with the substitution of "statutory small tenant" for "landholder," and "equitable rent" for "fair rent," and with any other necessary modifications, apply for the purposes of this section as they apply for the purposes of the Landholders Acts:
- (15) Without prejudice to any agreement between the parties, the Land Court may, on the application of the landlord, and upon being satisfied that he desires to resume the holding or part thereof for building, planting, feuing, or some other reasonable purpose having relation to the good of the holding or the estate (including any purpose specified in section nineteen of this Act), authorise the resumption thereof by the landlord, subject to the payment of the like compensation to the tenant in respect of improvements on or in connection with the land resumed, to which a tenant would be entitled under the Agricultural Holdings (Scotland) Act, 1908, on the determination of his tenancy, and in addition, where part only of the holding is resumed, to such reduction of rent as may be agreed between the parties, or, in case of dispute, determined by the Land Court.

IX.—REGISTRATION AND REGISTERS.

(*From 1911 Act.*)

15. Registration.—(1) The procedure in connection with applications for registration of new holders under this Act shall be regulated as may be prescribed in rules of the Land Court.

(2) Registration of a new holder under this Act shall be constituted by an order of the Land Court granting registration, duly recorded, with the application on which it proceeds, in the Landholders Holdings Book.¹

33. Register of Small Holdings.—(1) It shall be the duty of the Board to compile and from time to time to revise a register of small holdings (whether held by landholders or statutory small tenants or not) throughout Scotland, in such form and containing such particulars as may be approved by the Secretary for Scotland.

(2) For the purposes of this section the expression “small holding” means any holding within the meaning of the Agricultural Holdings (Scotland) Act, 1908 (8 Edw. VII. c. 64), which either does not exceed fifty acres, or if exceeding fifty acres, is of an annual value as entered in the valuation roll not exceeding fifty pounds.

(3) Where a landlord and a tenant agree or the Land Court decide that the tenant is a landholder or a statutory small tenant, as the case may be, within the meaning of this Act, it shall be the duty of such landlord and tenant and of the Land Court to communicate such agreement or decision to the Board for the purposes of the small holdings register: Provided that a person shall not be held a landholder or a statutory small tenant by reason only that he is entered as such on the small holdings register.

X.—COTTARS.²

(*From 1886 Act.*)

34. . . .—“Cottar” means the occupier of a dwelling-house situate in a crofting parish with or without land who pays no

¹ See *infra*, p. 162.

² See also p. 170 as to loans.

rent to the landlord, as also the tenant from year to year of a dwelling-house situated in a crofting parish who resides therein, and who pays to the landlord therefor an annual rent not exceeding six pounds in money, whether with or without garden ground, but without arable or pasture land.

9. *Compensation to Cottar for Improvements on Removal.*—When a cottar if not paying rent is removed from his dwelling and any land or buildings occupied by him in connection therewith, or if paying rent renounces his tenancy or is removed, he shall be entitled to compensation for any permanent improvements,¹ provided that—

- (a) such improvements are suitable to the subject;
- (b) such improvements shall have been executed or paid for by the cottar or his predecessors in the same family;
- (c) such improvements have not been executed in virtue of any specific agreement in writing under which the cottar was bound to execute such improvements.

The provisions of the preceding section and of this section shall not apply to any buildings erected by a landholder or a cottar in violation of any interdict or other judicial order.

XI.—THE LAND COURT.

(*From 1911 Act.*)

3. *Constitution of Scottish Land Court.*—(1) It shall be lawful for His Majesty, on the recommendation of the Secretary for Scotland, as from the commencement of this Act, and from time to time as vacancies occur, to appoint not more than five persons, to be designated the Scottish Land Court (in this Act referred to as the Land Court) and to appoint one of such persons to be Chairman of the Court.

(2) The Chairman shall be a person who at the date of his appointment shall be an advocate of the Scottish Bar of not less than ten years' standing, and shall forthwith on his appoint-

¹ See p. 133.

ment have the same rank and tenure of office as if he had been appointed a judge of the Court of Session.

(3) One of the said persons shall be a person who can speak the Gaelic language.

(4) It shall be lawful for the Secretary for Scotland to remove any member of the Land Court (other than the Chairman) for inability or misbehaviour. Every order of removal shall state the reasons for which it is made, and no such order shall come into operation until it has lain before both Houses of Parliament for not less than thirty days while Parliament is sitting, nor if either House passes a resolution objecting to it.

5. If and when the Chairman is temporarily unable to attend, or his office is vacant, the Secretary for Scotland may appoint to act temporarily in his place any person having the qualification required for holding the office of Chairman and the person so appointed shall, during such inability or vacancy, have the same powers and perform the same duties as if he were the Chairman.

(6) The Secretary for Scotland shall from time to time appoint a fit person to act as principal clerk to the Land Court.

(7) The Land Court may appoint or employ such assessors, surveyors, law agents, valuers, clerks, messengers, and other persons required for the due performance of their duties, as the Treasury, on the recommendation of the Secretary for Scotland, may sanction.

(8) Any Crofters Commissioner or officer of the Crofters Commission in office at the commencement of this Act, who may not be appointed a member or an officer of the Land Court, shall receive such compensation as the Treasury may determine.

(9) There shall be paid to the Chairman of the Land Court a salary not exceeding two thousand pounds a year, and to each of the other members a salary not exceeding twelve hundred pounds a year, and such salaries shall be charged on and paid out of the Consolidated Fund of the United Kingdom, or the growing produce thereof. The Chairman shall have the same right to a retiring annuity proportionate to his salary, subject to the like conditions and incidents as if he had been appointed a judge of the Court of Session, and every such annuity shall be charged and paid as aforesaid.

(10) There shall be paid to each of the other persons appointed or employed under this section such salary or remuneration as the Treasury may sanction; and all such salaries and remuneration and the expenses of the Land Court incurred in the execution of their duties, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

(11) The Land Court shall submit such estimates and keep such accounts of their receipts and expenditure, and their accounts shall be audited in accordance with such regulations, as the Treasury may direct.

(12) It shall be lawful for the Land Court from time to time to make rules for conducting the business of the Court.

25. *Jurisdiction of Land Court.*—(1) The Land Court shall be a body corporate with a common seal. Judicial notice shall be taken by all courts of justice of the corporate seal of the Land Court, and any order or other instrument purporting to be signed with it shall be received as evidence without further proof. All orders and determinations of the Land Court shall be in writing.

(2) For the purposes of the Landholders Acts, the Land Court shall have full power and jurisdiction to hear and determine all matters, whether of law or fact, and no other court shall review the orders or determinations of the Land Court; Provided that the Land Court may, if they think fit, and shall, on the request of any party, state a special case on any question of law arising in any proceedings pending before them, for the opinion of either division of the Court of Session, who are hereby authorised finally to determine the same.

(*From 1886 Act.*)

25. *Finality of Land Court's Decision.*¹—The decision of the Land Court in regard to any of the matters committed to their determination by Landholders Acts shall be final.

(*From 1911 Act.*)

25. (3) *Procedure.*—The Land Court may, without prejudice to any provision contained in section seven of this Act, ascertain

¹ See also *supra* in section 25 (2) of 1911.

the facts in any case by hearing parties and examining witnesses, or by means of affidavits, or by such other mode of inquiry as they may deem appropriate, and may require the production of all books, papers, plans, and documents relating to the case, and without prejudice to the provisions of section twenty-four of the Act of 1886, they may summon and examine on oath such witnesses as they think fit to call or allow to appear before them. They may, when sitting in open court, report in writing to the Lord Ordinary on the Bills any person who has been guilty of contempt of court; and the Lord Ordinary may punish such person as if the contempt had been committed in his own court: Provided that when the Chairman is so sitting he shall have the same power as the Lord Ordinary to punish contempt of court.

(*From 1886 Act.*)

24. *Taking Evidence before Land Court.*—In any application under this Act it shall be competent to any of the parties thereto to demand, and for the Land Court to order, that the evidence shall be taken upon oath.

(*From 1911 Act.*)

25. (4) *Expenses.*—The Land Court may determine the amount of the expenses in any proceedings before the Court and the proportion to be borne by the different parties.

(5) *Quorum.*—Three members of the Land Court shall be a quorum: Provided that it shall be lawful for the Land Court to delegate such of their powers as they think expedient to any one member or to any two members of the Court, with or without the assistance of one or more land valuers, assessors, or other skilled persons, and from time to time to revoke, alter, or modify any such delegation of powers; but any order or determination arrived at under such delegation shall be subject to review upon appeal by three or more members of the Court (including where such court of review consists of three members not more than one member who was a party to such order or determination) sitting together, one of whom shall be the Chairman of the Land Court.

(6) *Execution of Judgment.*—An order of the Land Court

may be presented to the Sheriff, and the Sheriff, if satisfied that the order has been duly recorded, shall pronounce decree in conformity with such order on which execution and diligence shall proceed.

(*From 1886 Act.*)

21. . . . Boundaries, &c.—It shall also be competent to the Land Court to decide summarily any questions relating to the boundaries or marches between landholders' holdings, including grazings, or between landholders' holdings, including grazings and adjoining lands.

In the event of any dispute arising as to whether a person is a "landholder" within the meaning of this Act, it shall be competent for the Land Court to determine such question summarily.

26. Use of Sheriff Court-Houses.—The Land Court may use, free of charge, for holding its sittings the court-houses commonly used as Sheriff Courts, when the same are not required by the Sheriffs, and the officers of such courts shall be bound to attend the sittings of the Land Court, and perform similar duties to those which they are required to perform on the occasion of sittings of the Sheriff Court, with right to exact the same fees as are exigible by them for service at the sittings of the Sheriff Court.

27. Record of Proceedings ; Transmission of Applications by Sheriff-Clerk ; Sheriff-Clerk's Remuneration.—There shall be kept in the Sheriff-Clerk's office of the county to which, or to any part of which this Act applies, a book to be called the "Landholders Holdings Book." In this book the Sheriff-Clerk shall record every order of the Land Court with the application on which it proceeds, and any other proceeding in the case which the Land Court may think necessary to be recorded. It shall be the duty of the Land Court to send such orders and applications to the Sheriff-Clerk to be recorded.

In any county to which this Act applies which is divided into districts for judicial purposes, the "Landholders Holdings Book," applicable to the holdings within any district in which

there is a resident Sheriff-Clerk or Sheriff-Clerk-Depute having an office, shall be kept by the Sheriff-Clerk or Sheriff-Clerk-Depute resident within the district.

Every application shall be addressed to the Land Court at the Sheriff-Clerk's office, and it shall be the duty of the Sheriff-Clerk to transmit the same to the Land Court, according to such regulations as the Secretary for Scotland may prescribe.

The Sheriff-Clerks shall receive such remuneration as the Treasury may sanction out of moneys to be provided by Parliament.

29. *Forms of Procedure.*—The Land Court may, subject to the approval of the Secretary for Scotland, frame and issue such printed forms of application and other forms of procedure as they shall think proper.

It shall be in the power of the Land Court to make rules with reference to proceedings before the Land Court, and also, with the approval of the Treasury, to fix a scale of costs and fees to be charged in carrying the Landholders Acts into execution, and the taxation of such costs and fees, and the persons by whom, and the manner in which, such costs and fees are to be paid.

18. *Land Court to make Report of their Proceedings.*—The Land Court shall once in every year make a report to the Secretary for Scotland as to their proceedings under the Landholders Acts, and every such report shall be presented to Parliament.

XII.—THE BOARD OF AGRICULTURE.

(From 1911 Act.)

4. *Constitution of Board of Agriculture for Scotland.*—(1) It shall be lawful for His Majesty on the recommendation of the Secretary for Scotland as from the commencement of this Act, and from time to time as vacancies occur, to appoint not more than three persons to be designated the Board of Agriculture for Scotland (in this Act referred to as the Board) and to appoint one of such persons to be Chairman of the Board.

Any act or thing required or authorised to be done by the Board may be done by any one or more of the members thereof as the Secretary for Scotland may from time to time direct. Provided that all deeds, writs, and documents to be signed or executed by or on behalf of the Board may be signed or executed by any one of the members thereof and the secretary to the Board. The Board may sue or be sued under the designation aforesaid, and service on them of all legal processes and notices shall be effected by service on their secretary.

(2) The Board shall be charged with the general duty of promoting the interests of agriculture, forestry, and other rural industries in Scotland, and shall also exercise and perform any powers and duties which are or may be conferred on or transferred to them under the provisions of this Act. In the discharge of their duties they shall comply with such instructions or regulations as may from time to time be issued by the Secretary for Scotland, and they shall submit an annual report of their proceedings to him, which report shall be laid before both Houses of Parliament.

(3) The Board may undertake the collection and preparation of statistics relating to agriculture, forestry, and other rural industries, and may make or aid in making such inquiries, experiments, and research, and collect or aid in collecting such information relating thereto as they think advisable.

(4) It shall be the duty of the Board to promote, aid, and develop instruction in agriculture, forestry, and other rural industries.

(5) The Board shall take such steps as they think proper for the promotion and development of agricultural organisation and co-operation.

(6) Without prejudice to the provisions of the immediately preceding subsections, such one of the members of the Board as the Secretary for Scotland shall from time to time appoint shall be designated the Commissioner for Small Holdings and shall be specially charged with the duties herein-after committed to him.

(7) The Secretary for Scotland shall from time to time appoint a fit person to act as secretary to the Board.

(8) The members of the Board shall hold office during His

Majesty's pleasure. The Board may, subject to the approval of the Secretary for Scotland, appoint or employ such officers, clerks, and other persons as the Treasury may sanction.

(9) The members of the Board and other persons appointed or employed under this section shall respectively receive such salary or remuneration as the Treasury may sanction, and all such salaries or remuneration and the expenses of the Board incurred in the execution of their duties, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

(10) The Board shall submit such estimates and keep such accounts of their receipts and expenditure, and their accounts shall be audited in accordance with such regulations as the Treasury may direct.

(11) The powers and duties of the Board of Agriculture and Fisheries, exercisable in or in relation to Scotland under the enactments specified in the First Schedule to this Act or under any local Act, shall be transferred to the Board, or in the case of the powers and duties of any officer, to such member or officer of the Board as the Board nominate for the purpose.

(12) Subject as herein-after provided, it shall be lawful for His Majesty in Council by Order, made after consultation with the Board of Agriculture and Fisheries, and the Secretary for Scotland and with the consent of the Treasury, to transfer to the Board any powers and duties of the Board of Agriculture and Fisheries exercisable in or in relation to Scotland which are not transferred by this Act and to make any adjustment consequential on any transfer by or under this section, and to provide for any matter necessary or proper for giving full effect to any such transfer.

(13) Before any such order is made, the draft thereof shall be laid before each House of Parliament for not less than two months while Parliament is sitting, and if either House, before the expiration of such period of two months, presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft order.

(14) Nothing in this section shall transfer or authorise the transfer of any powers or duties under the Survey Act, 1870,

or any powers or duties exerciseable under the Diseases of Animals Act, 1894, or any enactment amending or extending the same.

XIII.—GENERAL FINANCIAL PROVISIONS.¹

(*From 1911 Act.*)

5. *Moneys Placed at Disposal of Board of Agriculture.*—The following moneys shall be placed at the disposal of the Board for the purposes herein-after specified:—

- (a) The annual sum of fifteen thousand pounds available under subsection two of section four of the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896 (59 & 60 Vict. c. 37), during the continuance of that Act; and
- (b) Any sums not exceeding one hundred and eighty-five thousand pounds annually voted by Parliament for the said purposes.

The said moneys shall in the financial year commencing on the first day of April nineteen hundred and twelve, and in any subsequent financial year, be paid into one fund hereby constituted under the name of the Agriculture (Scotland) Fund.

Any sum standing to the credit of the Congested Districts (Scotland) Fund at the commencement of this Act, and any sums required by the provisions of any Act to be carried to the Congested Districts (Scotland) Fund, shall at and after the commencement of this Act be carried to the Agriculture (Scotland) Fund.

6. *Application of Moneys.*—The Agriculture (Scotland) Fund shall be applied for the following purposes, that is to say, for the purpose of facilitating the constitution of new landholders' holdings, the enlargement of landholders' holdings, and the improvement and rebuilding of dwelling-houses or other buildings of landholders and cottars in terms of the Landholders Acts or the Congested Districts (Scotland) Act, 1897,² and for the purpose of exercising the other powers and

¹ As to loans, see pp. 142 and 170.

² The provisions of this Act should be inserted in the Code under this section, but as they are a compact block it is unnecessary to print them

duties conferred on or transferred to the Board under the provisions of this Act, in accordance with schemes to be approved by the Secretary for Scotland.

XIV.—TRANSFER OF POWERS, DUTIES, &c.

(*From 1911 Act.*)

28. *Transfer of Powers and Duties.*—(1) From and after the commencement of this Act the Crofters Commission established by section seventeen of the Act of 1886, and the Congested Districts (Scotland) Commissioners established by the Congested Districts (Scotland) Act, 1897 (60 & 61 Vict. c. 53), shall cease to exist, and all the powers and duties vested in or imposed on the Crofters Commission by any Act of Parliament in force at such date shall, subject to the provisions of this Act, be vested in, transferred to, and imposed on the Land Court, and all the powers and duties vested in or imposed on the Congested Districts (Scotland) Commissioners by the Congested Districts (Scotland) Act, 1897, shall, subject as aforesaid, be vested in, transferred to, and imposed on the Board, and, except as otherwise provided by this Act, all such powers and duties shall be exercised and performed by the Land Court or the Board, as the case may be, as nearly as may be in like manner and subject to the same conditions, liabilities, and incidents respectively as such powers and duties might before such date have been exercised and performed by such Commission or Commissioners respectively, and in the construction and for the purposes of any Act of Parliament, contract, order, regulation, decree, award, or other documents made, passed, entered into, or executed, or of any action or proceeding raised before such date, the name of the Land Court or the Board, as the case may be, shall be deemed to be substituted for such Commission or Commissioners respectively.

(2) All powers and duties transferred to the Board from twice, particularly as they apply only to part of the country. They will be found at p. 110.

the Board of Agriculture and Fisheries by this Act, or any Order in Council made in pursuance thereof, shall be exercised and performed by the Board as nearly as may be in like manner and subject to the same conditions, liabilities, and incidents as such powers and duties might before the date of transfer have been exercised and performed by the Board of Agriculture and Fisheries; and in the construction and for the purposes of any Act of Parliament, contract, order, regulation, decree, award, or other document made, passed, entered into, or executed, or of any action or proceeding raised before the date of transfer, but so far only as may be necessary for the exercise of the powers or the discharge of the duties transferred, the name of the Board shall be substituted for the Board of Agriculture and Fisheries.

29. *Transfer of Property.*—All property belonging to, or held in trust for, the Congested Districts (Scotland) Commissioners shall from and after the commencement of this Act pass to and vest in and be held in trust for the Board, subject to all debts and liabilities affecting the same, and, subject to the provisions of this Act, shall be held by the Board for the purposes for which it is now held or would have been held if this Act had not passed.

30. *Transfer of Officers.*—Such of the persons employed by the Crofters Commission as the Secretary for Scotland, with the consent of the Treasury, may determine shall, from and after the commencement of this Act, be attached to and be officers of the Land Court, and such of the persons employed by the Congested Districts (Scotland) Commissioners as the Secretary for Scotland, with the consent of the Treasury, may determine, shall from and after the commencement of this Act be attached to and be officers of the Board; and (without prejudice to any existing rights) persons so transferred shall thereafter, if in the case of any of such persons the Treasury so determine, be permanent civil servants of the Crown within the meaning of section seventeen of the Superannuation Act, 1859 (22 Vict. c. 26).

Provided that any officer of the Congested Districts (Scot-

land) Commissioners in office at the commencement of this Act who may not be appointed an officer of the Board shall receive such compensation as the Treasury may determine.

XV.—FISHING-BOAT LOANS.

(*From 1886 Act.*)

32. *Loans for the Purchase and Equipment of Fishing-Boats.*—

For the purpose of enabling the Fishery Board for Scotland, established under the Fishery Board (Scotland) Act, 1882, to make advances by way of loan to persons engaged in the prosecution of the fishing industry, whether landholders or others, in crofting parishes abutting upon the sea, it shall be lawful for the Treasury to advance to the Fishery Board such sums as may from time to time be placed at their disposal by Parliament for the purpose.

The purposes to which the sums advanced as aforesaid shall be applied by way of loan shall be deemed to include the building, purchase, or repair of vessels, boats, and gear for fishing purposes, and any other purpose of the like nature, for the benefit or encouragement of the fishing industry within the localities above specified, which may be sanctioned by the Fishery Board, with consent of the Secretary for Scotland.

The loans in making which the said sums shall be applied, shall be made by the Fishery Board upon such terms as to repayment, security, rate, and payment of interest, and otherwise, as the Secretary for Scotland, with the consent of the Treasury, shall determine.

All moneys due in respect of loans made under this Act may be recovered by the Fishery Board summarily, in manner provided by the Summary Jurisdiction Acts (27 & 28 Vict. c. 53; 44 & 45 Vict. c. 33), and the secretary of the Board for the time being shall have power to sue for and recover such moneys in name of the Board.

A certificate, purporting to be signed by the Chairman and Secretary of the Fishery Board, stating the amount due from any person in respect of any loan made to him under this Act, together with the interest thereon, shall, until the contrary is

proved, be evidence of the amount due and of the liability of the person therein named to pay the same.

If at any time while any part of a loan under this Act remains unpaid, the Fishery Board are satisfied that the borrower is not carrying into effect the undertaking for which the loan was made, they may forthwith sue for and recover summarily the loan and all moneys due by him in respect thereof.

All moneys recovered by the Fishery Board in repayment of such loans, and interest thereon, shall be paid by the Fishery Board to the account of Her Majesty's Exchequer, as the Treasury may from time to time direct.

The Fishery Board shall, in the annual report to be made by them to the Secretary for Scotland, in terms of the Fishery Board (Scotland) Act, 1882 (45 & 46 Vict. c. 78), and the Secretary for Scotland Act, 1885 (48 & 49 Vict. c. 61), give an account of their intromissions under this Act during the preceding year.

XVI.—MISCELLANEOUS PROVISIONS.

(*From 1911 Act.*)

9. *Loans for Buildings.*—The Board may, where they are of opinion that assistance should be provided for the improvement or rebuilding of dwelling-houses or other buildings of landholders or cottars, provide such assistance by way of loan, subject to the like conditions and incidents as loans made under section seven, and if made to a landholder subject to the provisions of section eight of this Act.

35. *Small Holdings may be Constituted Outside the Act.*—Nothing in this Act contained shall prejudice or in any way affect the right of any owner of land at any time after the commencement of this Act, to constitute and equip a small holding, as defined in the section of this Act providing for a register of small holdings, and to let such holding to any person at such rent, for such period, and on such terms and conditions as may be agreed on between them,

and none of the provisions of this Act shall, except by the joint consent of such owner and such person, apply to such holding, provided that as regards land comprised in a scheme referred to in an intimation to a landlord made in terms of subsection nine of section seven of this Act the said right shall not, while such scheme is under consideration, be exercised without the consent of the Land Court.

27. *Special Provision for the Island of Lewis.*—In the Island of Lewis, in so far as it lies within the county of Ross and Cromarty, a person shall not be held an existing yearly tenant or qualified leaseholder under this Act in respect of any land the present rent of which within the meaning of this Act exceeds thirty pounds in money, unless such land (exclusive of any common pasture or grazing land held or to be held therewith) does not exceed thirty acres (but without prejudice to the power of the Land Court, in determining from time to time a fair rent, to fix a rent exceeding thirty pounds).

31. (5) *Crofter.*—If not inconsistent with the context, references in any Act of Parliament to a crofter shall be construed as references to a landholder within the meaning of this Act.

(6) *Rating.*—Notwithstanding anything contained in this or any other Act the expression “lessee” in section four of the Lands Valuation (Scotland) Amendment Act, 1895, shall include a landholder in the same way and to the same effect as if a landholder were a lessee holding under a lease or agreement the stipulated duration of which is twenty-one years or under from the date of entry under the same.

34. *Act to Apply to Crown Land.*—This Act shall apply to lands vested in His Majesty in right of the Crown, and under the management of the Commissioners of Woods to such extent as the Commissioners of Woods may agree, but shall not apply to lands which are held by or on behalf of the Admiralty, War Office, or any other Government Department, or which under statutory powers have been acquired, or subjected to servitudes or restrictions for the purposes of the Naval or Military Forces of the Crown.

(From 1886 Act.)

30. *Sole Arbiter may be Chosen.*—Where, in any proceeding under the Landholders Acts, the Land Court is empowered to pronounce an order, the landlord and the landholder may agree to accept the decision of a sole arbiter mutually chosen instead of the decision of the Land Court, and in that case any order pronounced by such sole arbiter shall, when recorded in the “Landholders Holdings Book” along with the agreement to accept his decision, be as effectual to all intents and purposes as an order of the Land Court; and all regulations applicable to the Land Court, and to the orders pronounced by them, shall apply to any sole arbiter and the orders pronounced by him.

DEFINITIONS.¹

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Existing Yearly Tenant	118	Small Holding	157
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*(From 1911 Act.)***31. *Definitions.***—In this Act—

The expression “Act of 1886” means the Crofters Holdings (Scotland) Act, 1886 (49 & 50 Vict. c. 29):

The expression “Act of 1887” means the Crofters Holdings (Scotland) Act, 1887 (50 & 51 Vict. c. 24):

The expression “Act of 1891” means the Crofters Common Grazings Regulation Act, 1891 (54 & 55 Vict. c. 41):

The expression “Act of 1908” means the Crofters Common Grazings Regulation Act, 1908 (8 Edw. VII. c. 50):

¹ Some definitions which have been given effect to in the body of the Code by altering words in the earlier Acts are not here included. A complete list of definitions will be found on p. 185.

The expression "Crofters Acts" means the Act of 1886, the Act of 1887, the Act of 1891, and the Act of 1908 :

The expression "statutory successor" means any person who in terms of the Landholders Acts as the case may be has succeeded or may succeed to a holding whether as heir-at-law or legatee of his immediate predecessor being a crofter or landholder in occupation of the holding :

The expression "termination of the lease" means the expiration of the lease through the running out of the stipulated term of endurance or through the parties, or either of them, exercising their right to take advantage of a break stipulated for in the lease or through any agreement between the parties being made, or other circumstances arising whereby the lease is terminated.

(2) In the Crofters Acts, the Agricultural Rates (Scotland) Act, 1896, and the Congested Districts (Scotland) Act, 1897, the expression "holding" shall be substituted for the expression "croft," and the expression "crofting parish" shall be construed as meaning a parish to which the Crofters Acts applied at the commencement of this Act.

(From 1886 Act.)

"Treasury" means the Commissioners of Her Majesty's Treasury.

Other expressions have the same meanings as in the Agricultural Holdings (Scotland) Act, 1883 (46 & 47 Vict. c. 62).

(From Agricultural Holdings (Scotland) Act, 1883.)

42. . . .—"Lease" means letting of or agreement for the letting land for a term of years or for lives, or for lives and years, or from year to year.

"Landlord" in relation to a holding means any person for the time being entitled to receive the rents and profits of, or to take possession of, any holding.

"Tenant" means the holder of land under a lease.

"Landlord" or "tenant" includes the executors, adminis-

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trators, assignees, legatee, disponee, or next-of-kin, husband, guardian, *curator bonis* or trustees in bankruptcy of a landlord or tenant.

“Holding”¹ means any piece of land held by a tenant.

“Person” includes a body of persons or a corporation.

“Sheriff” includes Sheriff-Substitute.

¹ See also section 2 of 1911, p. 118, and section 26, pp. 119 and 120.

DIGEST

OF

DECISIONS OF THE COURT OF SESSION UNDER
THE CROFTERS ACTS, FOR THE PERIOD FROM
1886 TO 1ST JANUARY 1911.¹

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¹ Although the rubrics have all been thrown into the past so as not to foreclose any question of a change under the Act of 1911, most of the decisions seem still applicable.

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APPLICATION OF ACTS.

(See also Nos. 35, 36.)

1. *Subtenant.*

A subtenant was not a crofter within the meaning of the Act (*Livingstone v. Beattie*, 1891, 18 R. 735; *Dalglish v. Livingston*, 1895, 22 R. 646).

2. *Subtenant—Recognition by Landlord.*

An occupier whose holding was included in a farm and who was removable by the tenant of the farm, was not a crofter, although formerly when the farm was unlet he held directly from the landlord (*Dalglish v. Livingston*, 1895, 22 R. 646).

3. *Holding—Inn.*

Land let along with an inn was not a crofter's holding (*Stuart & Stuart v. McLeod*, 1891, 19 R. 223).

4. *Holding—Ferry.*

A dwelling-house and parcel of land held along with a ferry did not constitute a crofter's holding (*Breadalbane v. Orr*, 1896, 4 S. L. T. 75. Outer House).

ENLARGEMENT OF HOLDINGS.

5. *Land under Lease.*

The Crofters Commission might grant an application by crofters for enlargement of their holdings although the land

applied for was part of a farm let under a lease, the lease being dated subsequent to the Act of 1886 and the rent of the farm being above £100; and the effect of the order granting the application was not suspended until the termination of the lease (*Traill's Trustees v. Grieve*, 1890, 17 R. 1115).

6. *Application for Enlargement—Possession pending Litigation—
Messis sequitur sementem.*

The Crofters Commission had assigned certain lands let under lease for the enlargement of crofters' holdings. Pending a litigation between the landlord and the crofters as to the legality of the Commissioners' order, the tenant sowed a crop. It was held that he was entitled to reap the crop, the question as to whether the crofters had any claim to profits being reserved (*Swanson v. Grieve*, 1891, 18 R. 371).

ENTAIL IMPROVEMENTS.

7. *Authority to Charge for Compensation to Crofters.*

An heir of entail in possession could not obtain authority to charge against the estate the amount of anticipated claims for improvements by crofters (*Pet. Sinclair*, 1894, 1 S. L. T. 531).

JURISDICTION.

(See also Nos. 19, 21, 29.)

8. *Cottars' Compensation, Ascertainment of.*

Claims by cottars for compensation for improvements fell to be considered by the Crofters Commission, and it was incompetent to prosecute such a claim in a Court of law (*M'Dougall v. M'Alister*, 1890, 17 R. 555).

9. *Interdict pending Application to Commission—Trespass.*

The jurisdiction of the Court of Session to entertain an action by a proprietor for declarator and interdict against crofters whose holdings adjoined his lands, and who asserted that at the date of the Act of 1886 they had rights of pasturage

over his property, was not ousted by an application made by the crofters prior to the raising of the action and still pending, to have fair rents fixed for their holdings under the Act (*Duke of Sutherland v. Reed*, 1890, 18 R. 252).

10. *Arrears, Decree for, pending Application to Commission.*

A decree for payment of arrears of rent might be pronounced against a crofter notwithstanding the dependence of an application to the Crofters Commission to fix a fair rent and deal with arrears (*Fraser v. Macdonald*, 1886, 14 R. 181; and *Stuart & Stuart v. McLeod*, 1891, 19 R. 223).

11. *Finality of Commission.*

The Crofters Commission were not final upon a question not expressly adjudicated upon by them, although their decision showed that they proceeded upon the assumption that a certain view of the matter must be taken (*Dalgleish v. Livingston*, 1895, 22 R. 646).

12. *Commission not a Court—*Lis alibi pendens*.*

The Crofters Commission was not a Court of law, and therefore the dependence of a question before it did not warrant the plea of *lis alibi pendens* (*Breadalbane v. Orr*, 1896, 4 S. L. T. 118. Outer House).

13. *Powers of Commission—Finality—Declaratory Application.*

The Crofters Commission was an administrative body only, and had no jurisdiction to entertain applications to have persons declared to be crofters. Incidentally and for the purpose of determining whether they had jurisdiction, they might have to decide whether an applicant was a crofter; but their decision upon this question was not final, the question being one for a Court of law. *Question*: Whether reduction was a necessary or appropriate remedy? (*Sitwell v. McLeod*, 1899, 1 F. 950).

MARCH FENCES.

14. *Adjoining Lands—Tenure.*

A crofter was not the proprietor of his holding, and therefore he was not entitled, under the Act of 1661, c. 41, to require the proprietor of lands adjoining his croft, whether his own landlord or a stranger, to concur with him in erecting a march fence and pay half the cost (*Macdonald v. Dalgleish*, 1894, 21 R. 900).

PERTINENTS.

15. *Peats—Locus for Cutting—Landlord's Power to Prescribe.*

Although the tenant might be entitled to cut peats as a pertinent of his holding, the landlord, if there were no special agreement otherwise, or if the Commission had not regulated the matter, was entitled to fix the place where the crofter was to cut them, which must be within a reasonable distance from his holding. The circumstance that, when the Act passed, the crofter had permission to cut peats at a certain place did not convert that permission into a permanent right (*Parr v. MacLean*, 1889, 16 R. 810).

16. *Servitude—Purchaser of Adjoining Land—Seaware.*

In an action by the purchaser of a portion of an estate within a crofting parish for interdict against crofters on the remaining portion of the estate gathering seaware *ex adverso* of the lands which he had purchased, the crofters averred immemorial exercise of the right, and that it had been taken into account by the Crofters Commission in fixing their rents. Held that the crofters were entitled to a proof of their averments (*MacDonald v. MacDougall*, 1896, 23 R. 941).

17. *Seaware, Right to take.*

Observations by Lord Kyllachy on the question of the crofters' right to take seaware (*Mackinnon v. Macdonald*, 1905, 7 F. 589).

18. *Pertinents—Dispute between Crofters—Landlord.*

In a dispute between two bodies of crofters as to rights flowing from the landlord, held that the landlord must be cited as a party to the proceedings (*ibid*).

PROCEDURE.

(See also Nos. 8, 10, 12, 13, 29, and 30.)

19. *Order of Commission—Decree conform—Appeal.*

When an order of the Crofters Commission was presented to a Sheriff with a request for decree conform, the Sheriff, if satisfied that the order is *ex facie* in conformity with the statute, ought without further procedure to have granted decree conform, and from such decree there could be no appeal (*Argyll v. Cameron*, 1888, 16 R. 139).

20. *Removing—Suspension—Caution.*

A crofter who brought a note of suspension of a decree of removing was found entitled to have the note passed on juratory caution, on the ground that the point raised was a novel and important one on the construction of the Act, and that there was risk of injustice being done if juratory caution were not accepted (*Liebigstone v. Beattie*, 1890, 17 R. 702).

21. *Special Case—Amount—Competency.*

A special case as to the amount of rent payable by certain crofters dismissed on the ground that the value of the cause was under £25, section 68 of the Court of Session Act, 1868, not extending the jurisdiction of the Court of Session so as to enable it to decide in a special case questions not otherwise competent to it (*Bruce v. Henderson*, 1889, 17 R. 276).

22. *Party to Proceedings before Commission.*

A person to whom no intimation was made of an application to the Crofters Commission, and who was not represented before them, was not a party to the proceedings, although he might

have been cognisant of their dependence and his law agent have been present in Court as representing other parties in the proceedings (*Dalglish v. Livingston*, 1895, 22 R. 646).

PUBLIC RATES.

23. *Rates—Stay of Execution for Rent—Liability of Proprietor.*

The liability of the proprietor for rates was not suspended by reason of the suspension by the Crofters Commission of the right to sell in execution of any decree for rent pending the disposal of applications before them (*Macfarlane v. Matheson*, 1888, 16 R. 230).

24. *Valuation for Assessment.*

Where a crofter with a fixed rent purchased his holding, the fixed rent was not the criterion of valuation for the purpose of assessment. *Question reserved* as to the rule to be applied in the case of a subsisting croft where the fixed rent in respect of allowance for improvements by the crofter or otherwise was less than the annual value of the holding (*Mackay v. Assessor of Sutherland*, 1897, 24 R. 737; *Ferguson v. Assessor of Inverness*, 9th Dec. 1911).

RESUMPTION.

25. *Effect of Notice to Treat under Parliamentary Powers.*

A landlord who had received notice to treat, under Parliamentary powers, was not thereby divested of ownership in a question with his crofter, and he might apply to the Crofters Commission, under section 2 of the Crofters Act, for authority to resume possession of the holding. The notice to treat furnished the landlord with a reasonable purpose for the resumption of the croft in terms of the section (*Macmillan v. Cameron*, 1897, 5 S. L. T. 170. Outer House).

SUCCESSION AND BEQUEST.

26. *Succession—Crofting Parish—Date of Declaration as such.*

The heir of a person who was otherwise qualified as a crofter at the date of the passing of the Act, but who died

before the parish was declared to be a crofting parish, becomes a crofter when such a declaration was made by the Crofters Commission (*M'Nab v. Campbell*, 1888, 15 R. 472).

27. *Bequest—Remote Legatee.*

A crofter might pass over his nearest heirs and leave his croft to any one more remote, who would have taken upon intestacy if these heirs had not existed (*MacLean v. MacLean*, 1891, 18 R. 885).

28. *Bequest—Maternal Relative.*

A crofter could not bequeath his holding to any maternal relative (*Mackenzie v. Cameron*, 1894, 21 R. 427).

29. *Bequest—Sheriff—Finality.*

Question: Whether the decision of a Sheriff, finding that a person to whom a holding had been bequeathed was not one of the relatives to whom the deceased might legally bequeath his holding, was a final decision in the sense of the Act of 1886? (*Mackenzie v. Cameron*, 1894, 21 R. 427).

30. *Bequest—Legatee—Interim Possession.*

The provision in section 16 (*f*), under which a legatee was entitled to possession of the holding pending an application to have him found to be entitled to the holding, notwithstanding the landlord's objection to receive him as legatee, was applicable only in the case of a legatee who possessed the statutory qualifications, and did not apply in the case of a person who, not being qualified by relationship, in terms of the statute, propounded a claim as legatee. Such a person might be interdicted from occupying the holding (*Colquhoun v. Mackenzie*, 1894, 22 R. 23).

31. *Succession—Heirs-Portioners—Renunciation.*

On the failure of the eldest heir-portioner of a crofter, the succession passed to the eldest son of the heir-portioner, not to the next sister. *Question:* Whether the heir of a crofter, by renouncing his succession, could propel the suc-

cession to the next succeeding heir? (*Balfour v. Hutchison*, 1899, 7 S. L. T. 82. Outer House).

32. *Succession—Heir—Mora.*

Held that a person who claims a croft as heir of a deceased crofter must claim it timeously, and cannot *ex longo intervallo* vindicate it against the landlord or another tenant (*MacIver v. MacIver*, 1909, S. C. 639).

STATUTORY CONDITIONS.

33. *Subdivision.*

Where, subsequent to the passing of the Act of 1886, an arrangement was continued under which a crofter allowed to a farm labourer, as part remuneration for services, the use of a house and a bit of arable land upon the croft, it was held that this was not a breach of the statutory condition (sections 1, 4) against subdivision of the holding (*Abinger v. Cameron* 1888, 15 R. 598).

34. *Non-Residence.*

A person who, between 1885 and 1888, lived at a distance from his holding, visiting it only occasionally for a week or a fortnight at a time to do necessary farm work, the house being at other times during this period unoccupied, was held not to be a crofter within the meaning of the Act, in respect that he had not complied with the condition as to residence (*Livingstone v. Beattie*, 1891, 18 R. 735).

35. *Bankruptcy—Assignment—Right of Trustee in Cessio.*

Question: Whether the right to a croft passed to a trustee in a cessio? Opinion *contra*, per Lord Kincairney (*Mackenzie v. Munro*, 1894, 22 R. 45).

36. *Use of Croft for Non-Agricultural Purposes.*

A croft was an agricultural holding let for an agricultural rent, and a crofter could not, without the consent of his

landlord, divert any part of it to manufacturing or other non-agricultural uses (*Gilmour v. Peterson*, 1901, 3 F. 569).

37. *Bankruptcy—Renunciation of Croft.*

Held that the trustee on the sequestrated estate of a crofter could not, with the view of claiming compensation for improvements, call on the crofter to renounce the tenancy of the croft, because by the operation of the Act the crofter's notour bankruptcy had operated forfeiture of the tenancy (*Mackenzie's Trustee v. Mackenzie*, 1905, 7 F. 505).

APPENDIX.

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VI. Agricultural Rates, &c., Act, 1896	213

I.—INTERPRETATION AND SUBSTITUTION OF TERMS.

It may be useful to indicate where to look for these. The interpretation section of the Crofters Act (section 34) provides, "Other expressions have the same meanings as in the Agricultural Holdings (Scotland) Act, 1883." A note of these definitions will be found in the Code, p. 173. The interpretation section (31) of the 1911 Act is placed, oddly enough, neither at the beginning nor at the end of the Statute, but in the middle. There are a number of definitions too which are not in that section, but are scattered throughout the Act. A list of the definitions and substitutions may be found convenient:—

DEFINITIONS.

"Act of 1886," or 1887, 1891, 1898	1911, 31 (1)
"Act," "This Act," "The Act"	1911, 31 (3)
"Application," "Applicants"	1911, 16 (1)
"Board"	1911, 4 (1)
"Commisioner for Small Holdings"	1911 4 (6)
"Cottar"	1886, 34
"Crofters Acts"	1911, 31 (1)
"Crofting Parish"	1911, 31 (2)
"Cultivate"	1911, 10 (1)
"Existing Crofter"	1911, 2 (II.)
"Existing Yearly Tenant"	1911, 2 (II.)
"Fixed Rent"	1886, 6 (2)
"Game"	1886, 1 (7)
"Holding"	1911, (2)

"Land Court "	.	.	.	.	.	1911, 3 (1)
"Landholder "	.	.	.	.	.	1911, 2 (2)
"Landholders Acts "	.	.	.	.	.	1911, 2 (1)
"Landlord "	.	.	.	.	1886, 34, & 1883, 42	
"Lease "	.	.	.	.	.	(Id.)
"Legatee "	.	.	.	.	.	1886, 16
"Lessee "	.	.	.	.	.	1911, 31 (6)
"New Holder "	.	.	.	.	.	1911, 2 (1, IV.)
"Passing of this Act "	.	.	.	.	.	1911, 10 (2)
"Permanent Improvements "	.	.	.	.	.	1886, 34
"Person "	.	.	.	.	1886, 34, & 1883, 42	
"Present Rent "	.	.	.	.	.	1911, 13
"Principal Act "	.	.	.	.	.	1911, 31 (4)
"Qualified Leaseholder "	.	.	.	.	.	1911, 2 (1, III.)
"Sheriff "	.	.	.	.	1886, 34, & 1883, 42	
"Small Holding "	.	.	.	.	.	1911, 33 (2)
"Small Landholders Acts, 1886-1911 "	.	.	.	.	.	1911, 36
"Statutory Condition "	.	.	.	.	.	1886, 1
"Statutory Small Tenant "	.	.	.	.	.	1911, 32
"Statutory Successor "	.	.	.	.	.	1911, 31 (1)
"Tenant "	.	.	.	.	1886, 34, & 1883, 42	
"Termination of Lease "	.	.	.	.	.	1911, 31 (1)
"Treasury "	.	.	.	.	.	1886, 34

SUBSTITUTIONS

"Board of Agriculture " for						
(1) "Congested Districts Board "	.	.	.	.	.	1911, 28 (1)
(2) "Board of Agriculture and Fisheries "	.	.	.	.	.	1911, 28 (2)
"Croft," "Holding " substituted	.	.	.	.	.	1911, 31 (2)
"Crofter," "Landholder " substituted	.	.	.	.	1911, 1, & 31 (5)	
"Crofters Commission," "Land Court " substituted	.	.	.	.	.	1911, 28 (1)
"Crofters' Holdings Act, 1886," in 1887, to read						
"Landholders Act "	.	.	.	.	.	1911, 31 (4)
"Holding " for "Croft "	.	.	.	.	.	1911, 31 (2)
"Land Court " for						
(1) "Crofters Commission "	.	.	.	.	.	1911, 28 (1)
(2) "Sheriff " in 1886, 16	.	.	.	.	.	1911, 20
"Landholder " for "Crofter "	.	.	.	.	1911, 1, & 31 (5)	
"Nor " for "or " in 1886, 33	.	.	.	.	.	1911, 26 (7)
"Sheriff," "Land Court " substituted in 1886, 16	.	.	.	.	.	1911, 20
"Two months " for "21 days " in 1886, 16	.	.	.	.	.	1911, 20

II.—CROFTING PARISHES.

The Crofters Acts applied only to crofting parishes in the counties of Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney and Shetland (see pp. 89, 96). All the parishes in these counties were held to be crofting parishes except—

ARGYLL.	INVERNESS.
Campbeltown.	Cawdor.
Dunoon and Kilmun.	Croy.
Gigha and Cara.	
Inverchaolain.	
Killean and Kilkenzie.	ROSS AND CROMARTY.
Kilmartin.	
Kilmodan.	Cromarty.
Southend.	Rosemarkie.

Thus, with the exception of the twelve parishes above mentioned, the whole of the counties named in the 1886 Act were brought within the scope of the legislation. Outside this area nobody becomes a landholder under the 1911 Act as having been an existing crofter; otherwise the delimitation of area is not now of much practical importance, but in connection with one or two eleemosynary purposes the expression crofting parish still finds a place in the Acts.

III.—REMOVAL OF LANDHOLDERS FOR BREACH OF CONDITIONS.

Section 3 of the Crofters Act, 1886, provides that—

“When one year’s rent of the holding, but less than two years’ rent, is due and unpaid, the landholder shall be liable to be removed in manner provided by section 27 of the Agricultural Holdings (Scotland) Act, 1883 (46 & 47 Vict. c. 62).

“When two years’ rent of the holding is due and unpaid, or when the landholder has broken any other of the statutory conditions, he shall forfeit his tenancy, and shall be liable to be removed in manner provided by the fourth section of the Act of Sederunt anent Removing, of the fourteenth day of December one thousand seven hundred and fifty-six.”

Section 27 of the Agricultural Holdings Act of 1883¹ provided—

¹ Section 17 of the 1908 Act.

“In any case in which the landlord’s right of hypothec for the rent has ceased and determined—

“When six months’ rent of the holding is due and unpaid, it shall be lawful for the landlord to raise an action of removing before the Sheriff against the tenant, concluding for his removal from the holding at the term of Whitsunday or Martinmas next ensuing after the action is brought; and unless the arrears of rent then due are paid, or caution is found to the satisfaction of the Sheriff for the same, and for one year’s rent further, the Sheriff may decern the tenant to remove, and eject him at such term in the same manner as if the lease were determined and the tenant had been legally warned to remove.

“A tenant so removed shall have the rights of an outgoing tenant, to which he would have been entitled if his lease had naturally expired at such term of Whitsunday or Martinmas.

“The second and third sections of the Hypothec Abolition (Scotland) Act, 1880, are hereby repealed, and the provisions of the fifth section of the Act of Sederunt anent Removing, of the fourteenth day of December one thousand seven hundred and fifty-six, shall not apply in any case in which the procedure under this section is competent.”

The fourth section of the Act of Sederunt anent Removing, of the fourteenth day of December one thousand seven hundred and fifty-six, provides—

“Where a tenant hath irritated his tack by suffering two years’ rent to be in arrear, it shall be lawful to the setter or heritor to declare the irritancy before the Judge Ordinary, and to insist in a summar removing before him. And it shall be lawful to the Sheriff or Steward-Depute, or their substitutes, to find the irritancy incurred, and to decern in the removing, any practice to the contrary notwithstanding.”

IV.—AGRICULTURAL HOLDINGS (SCOTLAND) ACT, 1908.

[8 EDW. VII. CHAP. 64.]

(This Act is referred to in several of the provisions of the Small Landholders Act of 1911, and it is necessary for those applying the Small Landholders Acts to have the Holdings Act in view. It may be found convenient, therefore, to have the text of the Act

in this manual. For elucidatory notes and comments, however, reference must be made to the handbooks upon the Agricultural Holdings Act by the present writer and by Mr. Isaac Connell.)

ARRANGEMENT OF SECTIONS.

COMPENSATION FOR IMPROVEMENTS ON HOLDINGS.

Section.

1. Right of tenant to compensation for improvements.
2. Consent of landlord as to improvement in First Schedule, Part I.
3. Notice to landlord as to improvement in First Schedule, Part II.
4. Agreements as to improvement in First Schedule, Part III.
5. Avoidance of contract inconsistent with Act.
6. Determination of claims to compensation.
7. Right of tenant who has paid compensation to outgoing tenant.
8. Provision as to change of tenancy.

COMPENSATION FOR DAMAGE BY GAME AND FOR DISTURBANCE.

9. Compensation for damage by game.
10. Compensation for unreasonable disturbance.

PROCEDURE IN ARBITRATION.

11. Procedure in arbitrations.
12. Recovery of compensation and other sums due.

CHARGE ON HOLDING FOR COMPENSATION.

13. Power for landlord on paying compensation to obtain charge.
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15. Advance made by a company.
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REMOVING FOR NON-PAYMENT OF RENT.

17. Removal of tenants.

NOTICE OF TERMINATION OF TENANCY.

18. Notice of termination of tenancy.

BEQUEST OF LEASE.

19. Bequest of lease.

FIXTURES AND BUILDINGS.

Section.

20. Tenant's property in fixtures and buildings.

MISCELLANEOUS RIGHTS OF LANDLORD AND TENANT.

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27. Application to Crown lands.

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SCHEDULES.

COMPENSATION FOR IMPROVEMENTS ON HOLDINGS.

1. *Right of Tenant to Compensation for Improvements.*—(1) Where a tenant of a holding has made thereon any improvement comprised in the First Schedule to this Act he shall, subject as in this Act

mentioned, be entitled, at the determination of a tenancy, on quitting his holding, to obtain from the landlord, as compensation under this Act for the improvement, such sum as fairly represents the value of the improvement to an incoming tenant.

(2) In the ascertainment of the amount of the compensation payable to a tenant under this section there shall be taken into account—

- (a) any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement; and
- (b) as respects manuring as defined by this Act, the value of the manure required by the lease or by custom to be returned to the holding in respect of any crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, not exceeding the value of the manure which would have been produced by the consumption on the holding of the crops so sold off or removed.

(3) Nothing in this section shall prejudice the right of a tenant to claim any compensation to which he may be entitled under custom, agreement, or otherwise, in lieu of any compensation provided by this section.

2. *Consent of Landlord as to Improvement in First Schedule, Part I.*—

Compensation under this Act shall not be payable in respect of any improvement comprised in Part I. of the First Schedule hereto, unless the landlord of the holding has, previously to the execution of the improvement, consented in writing to the making of the improvement, and any such consent may be given by the landlord unconditionally, or upon such terms as to compensation or otherwise as may be agreed upon between the landlord and the tenant, and, if any such agreement is made, any compensation payable under the agreement shall be substituted for compensation under this Act.

3. *Notice to Landlord as to Improvement in First Schedule, Part II.*

—(1) Compensation under this Act shall not be payable in respect of any improvement comprised in Part II. of the First Schedule hereto, unless the tenant of the holding has, not more than three nor less than two months before beginning to execute the improvement, given to the landlord notice in writing of his intention so to do, and of the manner in which he proposes to do the intended

work, and upon such notice being given, the landlord and the tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed.

(2) If any such agreement is made, any compensation payable under the agreement shall be substituted for compensation under this Act.

(3) Or instead of making any such agreement the landlord may undertake to execute the improvement himself and, unless the notice of the tenant is previously withdrawn, proceed to do so in any reasonable and proper manner which he thinks fit, and recover from the tenant as rent a sum not exceeding five per cent. per annum on the outlay incurred, or not exceeding such annual sum payable for a period of twenty-five years as will repay that outlay in that period, with interest at the rate of three per cent. per annum :

Provided that, in default of any such agreement or undertaking or in the event of the landlord failing to execute the improvement within a reasonable time, the tenant may execute the improvement, and shall in respect thereof be entitled to compensation under this Act.

(4) The landlord and the tenant may by the lease or otherwise agree to dispense with any notice under this section, and any such agreement may provide for anything for which an agreement after notice under this section may provide, and in such case shall be of the same validity and effect as such last-mentioned agreement.

4. Agreements as to Improvement in First Schedule, Part III.—Where any agreement in writing secures to the tenant of a holding, for any improvement comprised in Part III. of the First Schedule hereto, fair and reasonable compensation, having regard to the circumstances existing at the time of making the agreement, the compensation so secured shall as respects that improvement be substituted for compensation under this Act.

5. Avoidance of Contract Inconsistent with Act.—Subject to the foregoing provisions of this Act, any contract or agreement made by a tenant of a holding, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement comprised in the First Schedule hereto, shall be void so far as it deprives him of that right.

6. Determination of Claims to Compensation.—(1) If the tenant of a holding claims to be entitled to compensation, whether under

this Act or under custom or agreement, or otherwise, in respect of any improvement comprised in the First Schedule to this Act, and if the landlord and tenant fail to agree as to the amount and time and mode of payment of the compensation, the difference shall be settled by arbitration.

(2) A claim by the tenant of a holding for compensation under this Act in respect of any improvement comprised in the First Schedule to this Act shall not be made after the determination of the tenancy :

Provided that, where the claim relates to an improvement executed after the determination of the tenancy, but while the tenant lawfully remains in occupation of part of the holding, the claim may be made at any time before the tenant quits that part.

(3) Where any claim by a tenant of a holding for compensation in respect of any improvement comprised in the First Schedule to this Act is referred to arbitration, and any sum is claimed to be due to the tenant from the landlord in respect of any breach of contract or otherwise in respect of the holding, or to the landlord from the tenant in respect of any deterioration wilfully committed or permitted by the tenant, or in respect of breach of contract or otherwise in respect of the holding, the party claiming that sum may, if he thinks fit, by notice in writing given by registered letter or otherwise to the other party not later than seven days after the appointment of the arbiter, require that the arbitration shall extend to the determination of the claim to that sum, and thereupon the provisions of this section with respect to arbitration shall apply accordingly.

(4) Where a claim for compensation under this Act has been referred to arbitration, and the compensation payable under an agreement is by this Act to be substituted for compensation under this Act, such compensation as is to be so substituted shall be awarded in respect of any improvement provided for by the agreement.

7. Right of Tenant who has Paid Compensation to Outgoing Tenant.

—Where an incoming tenant of a holding has, with the consent in writing of his landlord, paid to an outgoing tenant any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement, the incoming tenant shall be entitled on quitting the holding to claim compensation in respect of the improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the

holding, and quitted it at the time at which the incoming tenant quits it.

8. *Provision as to Change of Tenancy.*—A tenant who has remained in his holding during two or more tenancies shall not, on quitting his holding, be deprived of his right to claim compensation under this Act in respect of improvements by reason only that the improvements were not made during the tenancy on the determination of which he quits the holding.

COMPENSATION FOR DAMAGE BY GAME AND FOR DISTURBANCE.

9. *Compensation for Damage by Game.*—(1) Where a tenant of a holding has sustained damage to his crops from game, the right to kill and take which is vested neither in him nor in anyone claiming under him other than the landlord, and which the tenant has not permission in writing to kill, he shall subject as herein-after mentioned be entitled to compensation from his landlord for such damage if it exceeds in amount the sum of one shilling per acre of the area over which the damage extends, and any agreement to the contrary, or in limitation of such compensation, shall be void.

(2) The amount of compensation payable under this section shall, in default of agreement made after the damage has been suffered, be determined by arbitration, but no compensation shall be recoverable under this section unless notice in writing is given to the landlord as soon as may be after the damage was first observed by the tenant, and a reasonable opportunity is given to the landlord to inspect the damage—

(a) in the case of damage to a growing crop, before the crop is begun to be reaped, raised, or consumed; and

(b) in the case of damage to a crop reaped or raised, before it is begun to be removed from the land—

and unless notice in writing of the claim, together with the particulars thereof, is given to the landlord within one month after the expiration of the calendar year, or such other period of twelve months as by agreement between the landlord and tenant may be substituted therefor, in respect of which the claim is made.

(3) Where the landlord proves that, under a lease made before the commencement of this Act, any compensation for damage by game is payable by him, or that in fixing the rent to be paid under such lease allowance in respect of such damage to an agreed amount was expressly made, the arbiter shall make such deduction from the

compensation which would otherwise be payable under this section as may appear just.

(4) Where the right to kill and take the game is vested in some person other than the landlord, the landlord shall be entitled to be indemnified by such other person against all claims for compensation under this section.

(5) For the purposes of this section the expression "game" means deer, pheasants, partridges, grouse, and black game.

10. *Compensation for Unreasonable Disturbance.*—Where—

(a) the landlord of a holding, without good and sufficient cause, and for reasons inconsistent with good estate management, terminates the tenancy by notice to quit, or, having been requested in writing, at least one year before the expiration of a tenancy, to grant a renewal thereof, refuses to do so; or

(b) it has been proved that an increase of rent is demanded from the tenant of a holding, and that such increase was demanded by reason of an increase in the value of the holding due to improvements which have been executed by or at the cost of the tenant, and for which he has not, either directly or indirectly, received an equivalent from the landlord, and such demand results in the tenant quitting the holding,

the tenant upon quitting the holding shall, in addition to the compensation (if any) to which he may be entitled in respect of improvements, and notwithstanding any agreement to the contrary, be entitled to compensation for the loss or expense directly attributable to his quitting the holding which the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods, or his implements of husbandry, produce, or farm stock, on or used in connection with the holding:

Provided that no compensation under this section shall be payable—

(a) unless the tenant has given to the landlord a reasonable opportunity of making a valuation of such goods, implements, produce, and stock as aforesaid;

(b) unless the tenant has, within two months after he has received notice to quit or a refusal to grant a renewal of the tenancy, as the case may be, given to the landlord notice in writing of his intention to claim compensation under this section;

- (c) where the tenant with whom a lease was made has died within three months before the date of the notice to quit, or in the case of a lease for years before the refusal to grant a renewal;
- (d) if the claim for compensation is not made within three months after the time at which the tenant quits the holding.

In the event of any difference arising as to any matter under this section the difference shall, in default of agreement, be settled by arbitration.

PROCEDURE IN ARBITRATION.

11.¹ *Procedure in Arbitrations.*—(1) All questions which under this Act or under the lease are referred to arbitration shall, whether the matter to which the arbitration relates arose before or after the passing of this Act, be determined, notwithstanding any agreement under the lease or otherwise providing for a different method of arbitration, by a single arbiter in accordance with the provisions set out in the Second Schedule to this Act.

(2) Where any claim which is referred to arbitration relates to an improvement executed or matter arising after the determination of the tenancy, but while the tenant lawfully remains in occupation of part of the holding, the arbiter may, if he thinks fit, make a separate award in respect of that claim.

(3) If in any arbitration under this Act the arbiter states a case for the opinion of the Sheriff on any question of law, the opinion of the Sheriff on any question so stated shall be final, unless within the time and in accordance with the conditions prescribed by Act of Sederunt either party appeals to either division of the Court of Session, from whose decision no appeal shall lie.

(4) The Arbitration (Scotland) Act, 1894 (57 & 58 Vict. c. 13), shall not apply to any arbitration under this Act.

(5) Any person who wilfully and corruptly gives false evidence before an arbiter or oversman in any arbitration under this Act shall be guilty of perjury, and may be dealt with, prosecuted, and punished accordingly.

12. *Recovery of Compensation and other Sums Due.*—Any award or agreement under this Act as to compensation expenses or otherwise may, if any sum payable thereunder is not paid within one month

¹ This section is amended by the 1910 Act (*infra*, p. 213).

after it becomes due, be competently recorded for execution in the books of Council and Session or Sheriff Court books, and shall be enforceable in like manner as a recorded decree arbitral.

CHARGE ON HOLDING FOR COMPENSATION.

13. *Power for Landlord on Paying Compensation to Obtain Charge.*—

(1) A landlord, on paying to the tenant the amount due to him under this Act, or under custom or agreement, or otherwise in respect of compensation for an improvement comprised in the First Schedule hereto, or on his defraying himself the cost of improvements proposed to be executed by the tenant, shall be entitled to obtain from the Board an authority to charge, in favour of himself, his executors, administrators, and assignees, the holding or the estate of which it forms part by executing and registering in the Register of Sasines,—

(i) if the landlord has a leasehold interest in the holding, an assignation of the lease in security and for repayment of the amount paid or any part thereof, with such interest and by such instalments as the Board may determine; and

(ii) in any other case, a bond and disposition in security over the holding or the estate of which it forms part for repayment of the amount paid or any part thereof, with such interest and by such instalments as the Board may determine.

(2) Where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest shall by such bond and disposition in security or assignation be made payable after the time when the improvement in respect whereof compensation is paid will, in the judgment of the Board, have become exhausted, and such bond and disposition in security or assignation shall specify the times at which the total amount charged and each instalment thereof is to be payable.

(3) Any charge under this section shall rank after all prior charges and burdens heritably secured upon the holding or estate.

(4) Where a holding or estate is charged by the landlord under this section, the charge shall not be deemed to be a contravention of any prohibition against charging or burdening contained in the deed or instrument under which the holding or estate is held by the landlord.

(5) The price of any entailed land sold under the provisions of the Entail Acts, when such price is entailed estate within the meaning

of those Acts, may be applied by the landlord in respect of the remaining portion of the entailed estate, or in respect of any other estate belonging to him and entailed upon the same series of heirs, in payment of any expenditure and costs incurred by him in pursuance of this Act for executing or paying compensation for any improvement mentioned in Part I. or Part II. of the First Schedule hereto, or in discharge of any charge with which the estate is burdened in pursuance of this Act or of any enactment hereby repealed in respect of the improvement.

14. Incidence of Charge.—The sum charged by the order of the Board under this Act shall be a charge on the holding, or the estate of which it forms part, for the landlord's interest therein and for all interests therein subsequent to that of the landlord; but so that, in any case where the landlord's interest is an interest in a leasehold, the charge shall not extend beyond the interest of the landlord, his executors, administrators, and assignees.

15. Advance Made by a Company.—Any company now or hereafter incorporated by Parliament or incorporated under the Companies Acts, 1862 to 1900, and having power to advance money for the improvement of land, or for the cultivation and farming of land, may make an advance of money upon a bond and disposition in security or upon an assignation, as the case may be, executed upon the authority of the Board under this Act, or executed under any enactment hereby repealed, upon such terms and conditions as may be agreed upon between the company and the person entitled to the charge; and that company may assign any charge so acquired by them to any person or persons whomsoever.

16. Certificate as to Charges.—Where a charge may be made under this Act for compensation, the person making the award shall, at the request and cost of the person entitled to obtain the charge, certify the amount to be charged and the term for which the charge may properly be made, having regard to the time at which each improvement in respect of which compensation is awarded is to be deemed to be exhausted.

REMOVING FOR NON-PAYMENT OF RENT.

17. Removal of Tenants.—In any case in which the landlord's right of hypothec for the rent has ceased and determined—

(1) When six months' rent of the holding is due and unpaid,

it shall be lawful for the landlord to raise an action of removing before the Sheriff against the tenant, concluding for his removal from the holding at the term of Whitsunday or Martinmas next ensuing after the action is brought, and, unless the arrears of rent then due are paid or caution is found to the satisfaction of the Sheriff for the same, and for one year's rent further, the Sheriff may decern the tenant to remove, and eject him at such term in the same manner as if the lease were determined, and the tenant had been legally warned to remove :

- (2) A tenant so removed shall have the rights of an outgoing tenant to which he would have been entitled if his lease had naturally expired at such term of Whitsunday or Martinmas :
- (3) The provisions of section five of the Act of Sederunt anent removing of the fourteenth day of December seventeen hundred and fifty-six shall not apply in any case in which the procedure under this section is competent.

NOTICE OF TERMINATION OF TENANCY.

18. *Notice of Termination of Tenancy.*—(1) Notwithstanding the expiration of the stipulated endurance of any lease, the tenancy shall not come to an end unless written notice has been given by either party to the other of his intention to bring the tenancy to an end—

- (a) in the case of leases for three years and upwards, not less than one year nor more than two years before the termination of the lease ; and
- (b) in the case of leases from year to year, or for any other period less than three years, not less than six months before the termination of the lease.

(2) Failing such notice by either party, the lease shall be held to be renewed by tacit relocation for another year and thereafter from year to year.

(3) Notice by the landlord to the tenant under this section shall be given either in the same manner as notice of removal under section six of the Removal Terms (Scotland) Act, 1886 (49 & 50 Vict. c. 50), or in the form and manner prescribed by the Sheriff Courts (Scotland) Act, 1907 (7 Edw. VII. c. 51), and shall come in place of the notice required by the last-mentioned Act.

(4) Nothing in this section shall affect the right of a landlord to

remove a tenant who has been sequestrated under the Bankruptcy (Scotland) Act, 1856 (19 & 20 Vict. c. 79), or who by failure to pay rent or otherwise has incurred any irritancy of his lease or other liability to be removed.

(5) The provisions of this section relative to notice shall not apply to any stipulation in a lease entitling the landlord to resume land for building, planting, feuing, or other purposes, or to subjects let for any period less than a year.

BEQUEST OF LEASE.

19. *Bequest of Lease.*—A tenant of a holding may by will or other testamentary writing bequeath his lease to any person (in this section referred to as the legatee) subject to the following provisions:—

- (a) The legatee shall intimate the testamentary bequest to the landlord within twenty-one days after the death of the tenant, unless he is prevented by some unavoidable cause from making intimation within that time, and in that event he shall make intimation as soon as possible thereafter :
- (b) Intimation to the landlord by the legatee shall import acceptance of the lease by the legatee :
- (c) Within one month after intimation has been made to the landlord he may intimate to the legatee that he objects to receive him as tenant under the lease :
- (d) If the landlord makes no such intimation within one month, the lease shall be binding on the landlord and the legatee respectively, as landlord and tenant, as from the date of the death of the deceased tenant :
- (e) If the landlord intimates that he objects to receive the legatee as tenant under the lease, the legatee may present a petition to the Sheriff, praying for decree declaring that he is tenant under the lease as from the date of the death of the deceased tenant, of which petition due notice shall be given to the landlord, who may enter appearance and state his grounds of objection ; and, if any reasonable ground of objection is established to the satisfaction of the Sheriff, he shall declare the bequest to be null and void ; but otherwise he shall decree and declare in terms of the prayer of the petition :
- (f) The decision of the Sheriff under such petition as aforesaid shall be final :

- (g) Pending any proceedings under this section, the legatee shall have possession of the holding, unless the Sheriff otherwise directs on cause shown :
- (h) If the legatee does not accept the bequest, or if the bequest is declared to be null and void as aforesaid, the lease shall descend to the heir of the tenant in the same manner as if the bequest had not been made.

FIXTURES AND BUILDINGS.

20. *Tenant's Property in Fixtures and Buildings.*—(1) Any engine, machinery, fencing, or other fixture affixed to a holding by a tenant, and any building erected by him thereon for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, shall be the property of and be removable by the tenant before or within a reasonable time after the determination of the tenancy :

Provided that—

- (i) Before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect of the holding :
- (ii) In the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding :
- (iii) Immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal :
- (iv) The tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of his intention to remove it :
- (v) At any time before the expiration of such notice the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice given by the tenant as aforesaid and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay the tenant the fair value thereof to an incoming tenant of the holding ; and any difference as to the value shall be settled by arbitration.

(2) The provisions of this section shall apply to a fixture or building acquired since the thirty-first day of December nineteen hundred by a tenant in like manner as they apply to a fixture or building affixed or erected by a tenant, but shall not apply to any fixture or building affixed or erected before the first day of January eighteen hundred and eighty-four.

MISCELLANEOUS RIGHTS OF LANDLORD AND TENANT.

21. *Power of Entry by Landlord.*—The landlord of a holding or any person authorised by him may at all reasonable times enter on the holding for the purpose of viewing the state of the holding.

22. *Penal Rents and Liquidated Damages.*—Notwithstanding any provision in a lease making the tenant of a holding liable to pay a higher rent or other liquidated damages in the event of any breach or non-fulfilment of any of the terms or conditions in the lease, a landlord shall not be entitled to recover any sum in consequence of any such breach or non-fulfilment in excess of the damage actually suffered by him in consequence of the breach or non-fulfilment :

Provided that this section shall not apply to any of the terms or conditions in a lease prohibiting the breaking of permanent pasture, the grubbing of underwoods, or the felling, cutting, lopping, or injuring of trees, or regulating the burning of heather.

23. *Freedom of Cropping and Disposal of Produce.*—(1) Notwithstanding any custom of the country, or the provisions of any lease or agreement respecting the method of cropping of arable lands, or the disposal of crops, a tenant of a holding shall have full right to practise any system of cropping of the arable land on the holding, and to dispose of the produce of the holding, without incurring any penalty, forfeiture, or liability :

Provided that he shall previously have made, or, as soon as may be, shall make, suitable and adequate provision to protect the holding from injury or deterioration, which provision shall in the case of disposal of the produce of the holding consist in the return to the holding of the full equivalent manurial value to the holding of all crops sold off or removed from the holding in contravention of the custom, lease, or agreement.

This subsection shall not apply—

(a) in the case of a tenancy from year to year, as respects the year before the tenant quits the holding or any period

after he has given or received notice to quit which results in his quitting the holding; or

(b) in any other case, as respects the year before the expiration of the lease.

(2) If the tenant exercises his rights under this section in such a manner as to injure or deteriorate the holding, or to be likely to injure or deteriorate the holding, the landlord shall without prejudice to any other remedy which may be open to him be entitled to recover damages in respect of such injury or deterioration at any time, and, should the case so require, to obtain an interdict restraining the exercise of the rights under this section in that manner, and the amount of such damages may, in default of agreement, be determined by arbitration.

(3) A tenant shall not be entitled to any compensation in respect of improvements comprised in Part III. of the First Schedule to this Act which have been made for the purpose of making such provision to protect the holding from injury or deterioration as is required by this section.

(4) In this section the expression "arable land" shall not include land in grass which by the terms of any contract of tenancy is to be retained in the same condition throughout the tenancy.

24. *Record of Holding.*—If at the commencement of a tenancy of a holding entered into after the commencement of this Act either party so requires, a record of the condition of the buildings, fences, gates, roads, drains, ditches, and cultivation of the holding shall be made within three months after the commencement of the tenancy by a person to be appointed in default of agreement by the Board, and in default of agreement the cost of making such record shall be borne by the landlord and tenant in equal proportions.

PERSONS UNDER DISABILITY.

25. *Appointment of Guardian.*—Where a landlord or tenant is a pupil or minor, or is of unsound mind, not having a tutor, curator, or other guardian, the Sheriff on the application of any person interested may appoint to him a tutor or curator for the purposes of this Act, and may recall the appointment and appoint another tutor or curator if and as occasion requires.

26. *Provision as to Limited Owners.*—Subject to the provisions of this Act in relation to Crown, ecclesiastical, and charity lands, a

landlord, whatever may be his estate or interest in the holding, may give any consent, make any agreement, or do or have done to him any act in relation to improvements in respect of which compensation is payable under this Act, which he might give or make or do or have done to him if he were absolute owner of the holding.

CROWN LANDS.

27. *Application to Crown Lands.*—(1) This Act shall apply to land belonging to His Majesty in right of the Crown.

(2) With respect to any such land, for the purposes of this Act the Commissioners of Woods or other the proper officer or body having charge of the land for the time being, or, in case there is no such officer or body, then such person as His Majesty may appoint in writing under the Royal Sign Manual, shall represent His Majesty, and shall be deemed to be the landlord.

(3) The power given to the Treasury by section one of the Crown Lands Act, 1866 (29 & 30 Vict. c. 62) (being a power to direct the cost of certain improvements to be charged to capital and repaid out of income), shall extend to any compensation under this Act payable by the Commissioners of Woods in respect of an improvement comprised in Part I. or Part II. of the First Schedule hereto.

(4) Any compensation under this Act payable by those Commissioners, in respect of an improvement comprised in Part III. of the First Schedule hereto, shall be paid as part of the expenses of the management of the land revenues of the Crown.

ECCLESIASTICAL AND CHARITY LANDS.

28. *Application to Glebe and Charity Land.*—The powers by this Act conferred on a landlord (other than that of entering on a holding for the purpose of viewing the state of the holding) shall not be exercised by ministers in respect of their glebes, except with the approval in writing of the presbytery of the bounds, and shall not be exercised by trustees for ecclesiastical, educational, or charitable purposes, except with the previous approval in writing of the Secretary for Scotland.

SPECIAL PROVISIONS AS TO MARKET GARDENS.

29. *Special Provisions as to Market Gardens.*—(1) In the case of a holding in respect of which it is agreed by an agreement in writing

made on or after the first day of January eighteen hundred and ninety-eight that the holding shall be let or treated as a market garden—

- (i) The provisions of this Act shall apply as if the improvements comprised in the Third Schedule to this Act were comprised in Part III. of the First Schedule to this Act:

Provided that—

(a) in the case of Crown lands, compensation in respect of an improvement comprised in paragraphs (1) (2) and (5) of the said Third Schedule shall be paid in the same manner and out of the same funds as if it were an improvement comprised in Part I. of the said First Schedule; and

(b) the right of an incoming tenant to claim compensation in respect of the whole or part of an improvement which he has purchased may be exercised, although his landlord has not consented in writing to the purchase:

- (ii) The provisions of this Act relating to tenants' property in fixtures and buildings shall extend to every fixture or building affixed or erected by the tenant to or upon the holding, or acquired by him since the thirty-first day of December nineteen hundred, for the purposes of his trade or business as a market gardener:

- (iii) It shall be lawful for the tenant to remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out; but, if the tenant does not remove such fruit trees and fruit bushes before the determination of his tenancy, they shall remain the property of the landlord, and the tenant shall not be entitled to any compensation in respect thereof.

(2) Where under a lease current on the first day of January eighteen hundred and ninety-eight a holding was at that date in use or cultivation as a market garden with the knowledge of the landlord, and the tenant thereof has then executed thereon, without having received previously to the execution thereof any written notice of dissent by the landlord, any improvement comprised in the Third Schedule to this Act, the provisions of this section shall apply, in respect of that holding, as if it had been agreed in writing after that date that the holding should be let or treated as a market garden, so however that the improvements in respect of which com-

pensation is payable under those provisions as so applied shall include improvements executed before as well as improvements executed after that date :

Provided that where such a tenancy was a tenancy from year to year the compensation payable in respect of an improvement comprised in the Third Schedule to this Act shall be such (if any) as could have been claimed if this Act had not been passed :

(3) Where the land to which such agreement relates or so used and cultivated consists of part of a holding only, this section shall apply as if that part were a separate holding.

SUPPLEMENTAL PROVISIONS.

30. *Prohibition of Appeal from Sheriff-Substitute.*—Where any jurisdiction committed by this Act to the Sheriff is exercised by the Sheriff-Substitute there shall be no appeal to the Sheriff.

31. *Expenses in Sheriff Court.*—The Court of Session may by Act of Sederunt prescribe a scale of expenses for proceedings in the Sheriff Court under this Act, and such expenses shall be taxed by the Auditor of the Sheriff Court.

32. *General Savings of Rights.*—Except as in this Act expressed, nothing in this Act shall prejudicially affect any power, right, or remedy of a landlord, tenant, or other person, vested in or exercisable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a lease or other contract, or of any improvements, deteriorations, away-going crops, fixtures, tax, rate, teind, rent, or other thing.

33. *Validity of Consents, etc.*—It shall be no objection to any consent in writing or agreement in writing under this Act signed by the parties thereto or by any persons authorised by them that the consent or agreement has not been executed in accordance with the statutes regulating the execution of deeds in Scotland.

34. *Improvements Executed under Repealed Enactments.*—Except as otherwise expressly provided by this Act, the compensation in respect of an improvement made or begun before the commencement of this Act, or made upon a holding held under a lease, other than a lease from year to year, current on the first day of January eighteen hundred and eighty-four, shall be such (if any) as could

have been claimed if this Act had not been passed, but the procedure for the ascertainment and recovery thereof shall be such as is provided by this Act, and the amount so ascertained shall be payable, recoverable, and chargeable as if it were compensation under this Act.

35. Interpretation.—(1) In this Act, unless the context otherwise requires,—

“Lease” means a letting of or agreement for letting land for a term of years, or for lives, or for lives and years, or from year to year;

“Determination of tenancy” means the termination of a lease by reason of effluxion of time, or from any other cause;

“Landlord” means any person for the time being entitled to receive the rents and profits or to take possession of any holding;

“Tenant” means the holder of land under a lease;

“Landlord” or “tenant” includes the executors, administrators, assignees, legatee, disponent, or next-of-kin, husband, guardian, curator bonis, or trustee in bankruptcy, of a landlord or tenant;

“Absolute owner” means the owner or person capable of disposing by disposition or otherwise of the fee simple or dominium utile of the whole interest of or in land, although the land, or his interest therein, is burdened, charged, or encumbered;

“Holding” means any piece of land held by a tenant, which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden, and which is not let to the tenant during his continuance in any office, appointment, or employment held under the landlord;

“Market garden” means a holding cultivated, wholly or mainly, for the purpose of the trade or business of market gardening;

“Board” means the Board of Agriculture and Fisheries;

“Manuring” means any of the improvements numbered twenty-three, twenty-four, and twenty-five in Part III. of the First Schedule hereto.

(2) The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken

under or in pursuance of this Act in respect of compensation for improvements, or under any agreement made in pursuance of this Act.

(3) Anything which by or under this Act is required or authorised to be done to, by, or in respect of the landlord of a holding may be done to, by, or in respect of any agent of the landlord duly authorised in that behalf.

36. *Repeal.*—The enactments specified in the Fourth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule :

Provided that all orders, Acts of Sederunt, scales of expenses, and instruments issued and notices and consents given and having effect under any enactment hereby repealed shall have effect as if they had been made or given under this Act.

37. *Commencement.*—This Act shall come into operation on the first day of January nineteen hundred and nine.

38. *Short Title and Extent.*—(1) This Act may be cited as the Agricultural Holdings (Scotland) Act, 1908.

(2) This Act shall extend to Scotland only.

SCHEDULES.

FIRST SCHEDULE.

(Sections 1 to 6, 13, 23, 27, and 29.)

PART I.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS REQUIRED.

- (1) Erection, alteration, or enlargement of buildings.
- (2) Formation of silos.
- (3) Laying down of permanent pasture.
- (4) Making and planting of osier beds.
- (5) Making of water meadows or works of irrigation.
- (6) Making of gardens.

- (7) Making or improvement of roads or bridges.
 - (8) Making or improvement of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.
 - (9) Making or removal of permanent fences.
 - (10) Planting of hops.
 - (11) Planting of orchards or fruit bushes.
 - (12) Protecting young fruit trees.
 - (13) Reclaiming of waste land.
 - (14) Warping or weiring of land.
 - (15) Embankments and sluices against floods.
 - (16) Erection of wirework in hop gardens.
- [N.B.—*This part is subject as to market gardens to the provisions of the Third Schedule.*]

PART II.

IMPROVEMENT IN RESPECT OF WHICH NOTICE TO LANDLORD IS REQUIRED.

- (17) Drainage.

PART III.

IMPROVEMENTS IN RESPECT OF WHICH CONSENT OF OR NOTICE TO LANDLORD IS NOT REQUIRED.

- (18) Chalking of land.
- (19) Clay-burning.
- (20) Claying of land or spreading blaes upon land.
- (21) Liming of land.
- (22) Marling of land.
- (23) Application to land of purchased artificial or other purchased manure.
- (24) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn, cake, or other feeding stuff not produced on the holding.
- (25) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn proved by satisfactory evidence to have been produced and consumed on the holding.
- (26) Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the determination of the tenancy.

(27) Repairs to buildings, being buildings necessary for the proper cultivation or working of the holding, other than repairs which the tenant is himself under an obligation to execute :

Provided that the tenant, before beginning to execute any such repairs, shall give to the landlord notice in writing of his intention, together with particulars of such repairs, and shall not execute the repairs unless the landlord fails to execute them within a reasonable time after receiving such notice.

SECOND SCHEDULE.

(Section 11.)

RULES AS TO ARBITRATION.

Appointment of Arbitrator.

1. A person agreed upon between the parties, or in default of agreement nominated by the Board on the application in writing of either of the parties, shall be appointed arbitrator.

2. If a person appointed arbitrator dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

3. Neither party shall have power to revoke the appointment of the arbitrator without the consent of the other party.

4. Every appointment, notice, revocation, and consent under this part of these rules must be in writing.

Time for Award.

5. The arbitrator shall make and sign his award within twenty-eight days of his appointment or within such longer period as the Board may (whether the time for making the award has expired or not) direct.

Removal of Arbitrator.

6. Where an arbitrator has misconducted himself the Sheriff may remove him.

Evidence.

7. The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator on oath or affirmation in

relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbiter all samples, books, deeds, papers, accounts, writings, and documents, within their possession or power respectively which may be required or called for, and do all other things which during the proceedings the arbiter may require.

8. The arbiter shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbiter thinks fit, be examined on oath or affirmation.

Statement of Case.

9. The arbiter may at any stage of the proceedings, and shall, if so directed by the Sheriff (which direction may be given on the application of either party), state in the form of a special case for the opinion of the Sheriff any question of law arising in the course of the arbitration.

Award.

10. The arbiter shall, on the application of either party, specify the amount awarded in respect of any particular improvement or any particular matter the subject of the award, and the award shall fix a day not sooner than one month or later than two months after the delivery of the award for the payment of the money awarded as compensation, expenses, or otherwise, and shall be in such form as may be prescribed by the Board.

11. The award to be made by the arbiter shall be final and binding on the parties and the persons claiming under them respectively.

12. The arbiter may correct in an award any clerical mistake or error arising from any accidental slip or omission.

13. When an arbiter has misconducted himself, or an arbitration or award has been improperly procured, the Sheriff may set the award aside.

Expenses.

14. The expenses of and incidental to the arbitration and award shall be in the discretion of the arbiter, who may direct to and by whom and in what manner those expenses or any part thereof are to be paid, and the expenses shall be subject to taxation by the Auditor of the Sheriff Court on the application of either party, but that taxation shall be subject to review by the Sheriff.

15. The arbiter shall, in awarding expenses, take into consideration the reasonableness or unreasonableness of the claim of either party, either in respect of amount or otherwise, and any unreason-

able demand for particulars or refusal to supply particulars, and generally all the circumstances of the case, and may disallow the expenses of any witness whom he considers to have been called unnecessarily and any other expenses which he considers to have been incurred unnecessarily.

Forms.

16. Any forms for proceedings in arbitrations under this Act which may be prescribed by the Board shall, if used, be sufficient.

THIRD SCHEDULE.

(Section 29.)

IMPROVEMENTS SUBJECT TO SPECIAL PROVISIONS IN THE CASE OF MARKET GARDENS.

- (1) Planting of standard or other fruit trees permanently set out ;
- (2) Planting of fruit bushes permanently set out ;
- (3) Planting of strawberry plants ;
- (4) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years ;
- (5) Erection or enlargement of buildings for the purpose of the trade or business of a market gardener.

FOURTH SCHEDULE.

(Section 36.)

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
46 & 47 Vict. c. 62.	The Agricultural Holdings (Scotland) Act, 1883.	The whole Act.
60 & 61 Vict. c. 22	The Market Gardeners' Compensation (Scotland) Act, 1895.	The whole Act.
63 & 64 Vict. c. 50.	The Agricultural Holdings Act, 1900.	The whole Act, so far as not repealed.
6 Edw. VII. c. 56.	The Agricultural Holdings Act, 1906.	The whole Act, so far as not repealed.

V.—AGRICULTURAL HOLDINGS (SCOTLAND)
AMENDMENT ACT, 1910.

[10 EDW. VII. AND 1 GEO. V. CHAP. 28.]

An Act to amend the Provisions of the Agricultural Holdings (Scotland) Act, 1908, with respect to Waygoing Valuations.

1. *Amendment of the Agricultural Holdings (Scotland) Act, 1908.*—Notwithstanding anything in section eleven of the Agricultural Holdings (Scotland) Act, 1908 (8 Edw. VII. c. 64), contained, that section shall not apply to valuations of sheep stocks, dung, fallow, straw crops, fences, and other specific things the property of an outgoing tenant agreed under a lease to be taken over from him at the determination of a tenancy by the proprietor or incoming tenant, or to any questions which it may be necessary to determine in order to ascertain the sum to be paid in pursuance of such agreement, and that whether said valuations and questions are referred to arbitration under the lease or not.

2. *Short Title and Construction.*—This Act may be cited as the Agricultural Holdings (Scotland) Amendment Act, 1910, and this Act and the Agricultural Holdings (Scotland) Act, 1908, shall be read and construed as one Act, and may be cited together as the Agricultural Holdings (Scotland) Acts, 1908 and 1910.

VI.—AGRICULTURAL RATES, CONGESTED DISTRICTS,
AND BURGH LAND TAX RELIEF (SCOTLAND) ACT, 1896.

[59 & 60 VICT. CHAP. 37.]

An Act to amend the Law with respect to the Classification of Lands and Heritages for purposes of Rating in Scotland, for the Relief of the Occupiers of Agricultural Lands and Heritages, for the creation of a Fund for the Improvement of Congested Districts in the Highlands and Islands, and for Relief from the Payment of the Land Tax in Burghs in Scotland. [14th August 1896.]

1. *Classification of Agricultural Lands and Heritages for Purposes of Occupiers' Rates.*—As from the fifteenth day of May next after the passing of this Act and during the continuance thereof the annual value of all agricultural lands and heritages in Scotland—

- (1) shall for the purpose of the occupiers' consolidated rate leviable by county councils, including the portion thereof leviable under the Public Health (Scotland) Acts, be held to be the nearest aggregate sum of pounds sterling to three-eighths of the annual value thereof as appearing on the valuation roll; and
- (2) shall for the purpose of the occupiers' share of the poor rate, the school rate, and the other rates leviable by parish councils, be held to be the nearest aggregate sum of pounds sterling to three-eighths of the annual value thereof as appearing on the valuation roll, subject to the deductions in pursuance of section thirty-seven of the Poor Law (Scotland) Act, 1845 (8 & 9 Vict. c. 83).

Provided that where lands and heritages are classified in terms of section thirty-six of the Poor Law (Scotland) Act, 1845, if it shall be certified by the Secretary for Scotland that the rates leviable on the occupiers of agricultural lands and heritages in pursuance of the classification are less than, or as nearly as may be the same as, the rates which would without classification be leviable on such occupiers in terms of this Act, such classification (hereinafter termed a certified classification) shall have effect, and subsection two shall not apply.

The expression "agricultural lands and heritages" means any lands and heritages used for agricultural and pastoral purposes only, or as market gardens, orchards, or allotments, but does not include woodlands or land occupied together with a house as a park, garden, or pleasure-ground, or any land kept or preserved mainly or exclusively for sporting purposes. Provided that if any question shall arise as to the lands and heritages falling within the foregoing definition it shall be determined summarily by the Sheriff, whose decision shall be final.

The expression "parish council" includes school board where a school rate is levied directly by a school board.

2. *Ascertainment of Basis of Distribution of Grant in Respect of Reduction of Occupiers' Rates on Agricultural Lands and Heritages.*—

(1) The Secretary for Scotland shall ascertain and certify the amount which is to be taken as having been raised during the local financial year ending the fifteenth day of May, one thousand eight hundred and ninety-six, by each rating authority by each rate

to which this Act applies, and the portion of such amount which represents the occupiers' share of such rate in each rateable area.

(2) The Secretary for Scotland shall ascertain and certify the valuation of each rateable area to which this Act applies for the said year, and the portion of such valuation which represents the valuation of agricultural lands and heritages.

(3) That part of the occupiers' share of each rate which represents the proportion borne by the valuation of agricultural lands and heritages in the rateable area to the whole valuation of the rateable area shall to the extent of five-eighths thereof, ascertained and certified by the Secretary for Scotland, be the amount regulating the distribution of the balance of moneys herein-after mentioned in respect of that rate.

(4) The Secretary for Scotland may in case of error amend, or for the purpose of meeting any alteration in an area or authority to which a certificate relates may vary, a certificate under this Act, and any such amendment or variation shall have effect from the date of the original certificate, or any later date fixed by the said Secretary, but, save as in this section provided, a certificate shall be final and binding on all persons.

3. *Payment to Local Taxation (Scotland) Account.*—(1) During the continuance of this Act, the Commissioners of Inland Revenue, in such manner, by such payments, and under such regulations as the Treasury may direct, shall pay to the Local Taxation (Scotland) Account, out of the proceeds of the estate duty derived in Scotland from personal property, such sums as may be ascertained by the Treasury to be equal to eleven eightieth parts of the sums payable under the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), to the Local Taxation Account therein mentioned.

(2) The first payment under this section shall be made during the six months ending on the thirty-first day of March next after the passing of this Act, so as to make up a half-yearly payment to meet the payments out of the Local Taxation (Scotland) Account which may be made during the six ensuing months.

4. *Application of Payment to Local Taxation (Scotland) Account.*—The sums paid to the Local Taxation (Scotland) Account under this Act in respect of any financial year shall be applied by or under the direction of the Secretary for Scotland in manner following (that is to say):—

- (1) In paying to the Commissioners of Inland Revenue the sums payable during that year for land tax by Royal burghs and burghs of barony or regality in Scotland; and in paying to any burgh a sum equal to the annual amount of the land tax redeemed by such burgh; and
- (2) In transferring to an authority to be hereafter determined by Act of Parliament the sum of fifteen thousand pounds [for the Improvement of Congested Districts in the Highlands and Islands of Scotland],¹ such sum to be applied as may be provided in the said Act, and until so applied to remain to the credit of the Local Taxation (Scotland) Account; and
- (3) In distributing the balance among county councils and parish councils in Scotland in proportion to the amounts ascertained and certified as herein-before provided for the purpose of regulating such distribution.
- (4) Every sum paid or payable under this Act out of the Local Taxation (Scotland) Account to any authority in respect of any rate shall for all purposes be deemed to have been raised or to be raiseable from occupiers by the said rate.

5. *Certain Enactments, &c., to have no Effect during Continuance of this Act.*—As from the fifteenth day of May next after the passing of this Act, and during the continuance thereof, section thirty-six of the Poor Law (Scotland) Act, 1845 (8 & 9 Vict. c. 83), the Poor Law (Scotland) (No. 2) Act, 1861 (24 & 25 Vict. c. 37), and all enactments which require assessments leviable by county councils under the Public Health (Scotland) Acts to be levied in like manner as the assessment for the relief of the poor, and all classifications other than certified classifications and all established usages under the provisions of section thirty-five of the Poor Law (Scotland) Act, 1845, shall have no force or effect.

Provided that, notwithstanding the provisions of this Act, a parish council shall have power (1) to alter any classification so far as necessary to enable it to become a certified classification, or (2) to abandon any certified classification.

6. *As to Holdings in Crofting Parishes.*—In the case of any holding in a crofting parish,² the Land Court in fixing a fair rent for

¹ Repealed by 1911 Act. See Schedule 68.

² See 1911 Act, 31 (2), p. 58.

such holding shall not be entitled to take into account the relief effected by this Act from a proportion of the consolidated rate, poor rate, and other rates before mentioned.

7. *Short Title.*—This Act may be cited as the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896.

8. *Continuance of Act.*—This Act shall continue in force for five years after the thirty-first day of March next after the passing thereof, and no longer, unless continued by Parliament.¹

¹ The Act is annually continued.

VII.—MEMBERS OF LAND COURT AND BOARD OF AGRICULTURE.

Land Court.

NEIL J. D. KENNEDY, K.C., *Chairman.*

ALEXANDER DEWAR.

Colonel ROBERT F. DUDGEON, C.B.

EDWARD E. MORRISON.

NORMAN REID.

WILLIAM MACKENZIE, *Secretary and Principal Clerk.*

Board of Agriculture.

Sir ROBERT PATRICK WRIGHT, *Chairman.*

R. B. GREIG.

JOHN D. SUTHERLAND, *Commissioner for Small Holdings.*

H. M. CONACHER, *Secretary.*

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